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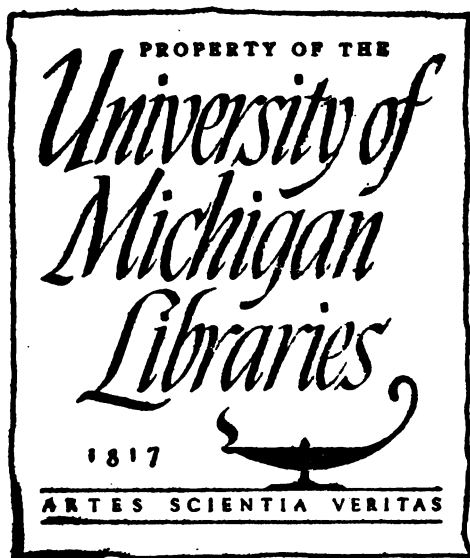
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THE
TOWN MEETING.

A Manual of Massachusetts Law.

BY AUSTIN DE WOLF,
ATTORNEY AT LAW, GREENFIELD.

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PREFACE.

THIS book is a compilation of statutes and decisions; it is not a treatise on town law. I have endeavored to bring together in convenient form for use and reference various laws, statute and common, including the legislation of 1890, applicable to town meetings. It was not, until recently, my intention to publish it. I prepared it for my own use and convenience. Hoping it will be useful to others, and in some degree lighten their labors, I submit it to the public.

AUSTIN DEWOLF.

GREENFIELD, MASS.,
July, 1890.

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Recd. by M. V. P.

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THE TOWN MEETING.

CHAPTER I.

TOWNS.

TOWNS are political organizations, created for political purposes, and as mere instrumentalities by which the legislature administers certain laws within particular limits. They have no authority to enlarge their powers, or to determine who shall comprise their members, and have no duties to perform but those imposed by law. Each town and each city is a corporation. Pub. Sts., c. 27, § 1. Yet the inhabitants do not, like the members of a private corporation, derive private or personal rights under the act of incorporation, the sole office and object of which is to regulate the manner of performing public and political duties. While exercising corporate powers to the extent indicated, they yet differ distinctively and widely from private and moneyed corporations, in organization, government, and mode of action. In common parlance, towns, cities, and

other municipal organizations are not known as corporations; they are spoken of not uncommonly by text writers in the law as *quasi* corporations. The affairs of towns are administered by the qualified voters, or by their officers and agents elected by them at meetings convened on due notice at a proper time and place. *Coolidge v. Brookline*, 114 Mass. 596; *Linehan v. Cambridge*, 109 Mass. 212.

TOWN MEETINGS.

Town meetings are in a sense legislative assemblies, and are held at a time and for the transaction of business not definitely prescribed by law. Meetings for the election of national, state, district, and county officers are not, strictly speaking, town meetings. *Commonwealth v. Smith*, 132 Mass. 289.

The annual town meeting must be held in February, March, or April. Special meetings may be held at other times. All meetings are held in pursuance of a warrant, issued by such person or persons as have authority so to do, and served in the manner provided by vote or by-law of the town, by a constable, or by some other person appointed for that purpose. St. 1890, c. 423, §§ 209-213. In the absence of a by-law or vote of the town regulating the length of notice for town meetings, seven days' notice is a reasonable time,

and is sufficient to render valid a meeting held after such notice. *Rand v. Wilder et al.*, 11 Cush. 294.

The warrant may be issued by the selectmen or by a majority of them; but a warrant signed by a minority of the selectmen "by order of the board" is insufficient, and a meeting held in pursuance of such a warrant will be illegal. *Reynolds v. New Salem*, 6 Met. 340; *Phelon v. Granville*, 140 Mass. 386. If for any reason there is but one selectman, that one may issue a warrant. If the selectmen unreasonably refuse to call a meeting, a justice of the peace, upon the application of ten or more legal voters, may call such meeting by a warrant under his hand directed to the constables of the town, if any, otherwise to any of the persons applying therefor. St. 1890, c. 423, § 212.

Words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or persons. Pub. Sts., c. 3, § 1, cl. 5.

The warrant must express the time — the day and hour, — and the place — the hall or other building — of the meeting, and the subjects to be acted upon; the selectmen shall insert therein all subjects, which may, in writing, be requested of them by any ten or more voters of the town, and nothing acted upon shall have a legal operation,

unless the subject-matter thereof is contained in the warrant. St. 1890, c. 423, §§ 210, 211; *Sherwin v. Bugbee*, 16 Vt. 439. The warrant should be directed to a constable. If there is no constable, the selectmen may appoint some person to serve the warrant; if the warrant is issued by a justice of the peace, he may, if there is no constable, direct the warrant to any of the persons applying therefor.

The constable or other person to whom the warrant is directed, should, in serving it, follow its directions, and indorse his return on the warrant itself. It is not necessary that the person who serves the warrant should specify in his return all his acts in the premises. It is sufficient if the return states that the inhabitants were notified "as the law directs," or "pursuant to the warrant." *Briggs v. Murdock*, 13 Pick. 305. The meeting will be illegal if the warrant is not duly served. *Rideout v. School District*, 1 Allen, 232; Dill. Mun. Corp., § 266.

The meeting must be held at the time and at the place designated in the warrant, but may be adjourned from time to time, and to any place within the town. St. 1890, c. 423, § 211. An adjournment may be made before the moderator is chosen. *Attorney-General v. Simonds*, 111 Mass. 256. The adjournment must be fairly made. *Chamberlain v. Dover*, 13 Me. 466. At an adjourned meeting any matters included in the war-

rant may be reconsidered or acted upon, if no intervening rights of other parties have become vested. *Reed v. Acton*, 117 Mass. 384.

The warrant for a town-meeting will not be construed with the same strictness as a power of attorney or a penal statute. If it gives intelligible notice of the subjects to be acted upon, it is sufficient. The articles presenting the various subjects for the consideration of the voters, are from the very nature of the case general in their description, and are oftentimes inartificial in their construction. They are the mere abstracts or heads of the propositions which are to be laid before the voters for their action; and matters incidental to, and connected with such propositions are alike proper for their consideration and action. The subject of choosing officers includes as an incident the granting to them of any special authority that the town is authorized by statute to confer upon them in the exercise of their official duties. Under an article "to elect all necessary town officers for the ensuing year," the town may vote "that the collector have all the powers that the town treasurer has when appointed collector of taxes." *Sherman v. Torrey*, 99 Mass. 472. Under an article "to see if the town will lay out, alter, or discontinue, or otherwise dispose of any town way," the town may vote to lay out, or discontinue, or alter any town way whatever. *Avery v. Stewart*, 1 Cush. 496.

Under an article "to raise" money, it may be voted "to borrow" money. *Whitney v. Stow*, 111 Mass. 368. Under an article "to raise such sums of money as may be necessary to defray town charges for the ensuing year," money may be raised for the payment of interest and such parts of the town debt as may become due during the year, as well as to meet the ordinary expenses of the town. *Westhampton v. Searle*, 127 Mass. 502. Under an article "to see if the town will make an appropriation towards purchasing a fire-engine," it may be voted "to raise and appropriate" for the purchase of a fire-engine. *Torrey v. Millbury*, 21 Pick. 64. Under an article "to see if the town will determine to build a town-house, and raise and appropriate money for the same," the town may vote to build a town-house out of the materials of an old meeting-house given to the town by a resolution of the proprietors thereof; and to appoint a committee to take down the meeting-house, procure a suitable site for a town-house, and superintend the erection of the same; and to vote to indemnify the committee against any claim of any proprietor of the meeting-house. *Hadsell v. Hancock*, 3 Gray, 526. Under an article "to hear the report of any committee heretofore chosen, and pass any vote in relation to the same," the town may vote sums recommended by a committee appointed at a former meeting, the warrant for which fully set

forth the business to be brought before it. *Fuller v. Groton*, 11 Gray, 340.

VOTERS.

By the common political law of this Commonwealth, when not otherwise provided by the Constitution or statute, minors, idiots, lunatics, women, and aliens are excluded from taking part in the government, either as voters or as officers. *Cush. Parl. Law*, 13, 24; *Cool. Con. Lim.* *29, *599; *Robinson's Case*, 131 Mass. 376.

No person shall have the right to vote, or be eligible to office under the Constitution of this Commonwealth, who shall not be able to read the Constitution in the English language, and write his name; provided, however, that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any persons who shall be sixty years of age or upwards at the time this amendment shall take effect. Art. XX., Amend. to Const. ratified May 1, 1857.

No person having served in the army or navy of the United States in time of war, and having been honorably discharged from such service, if otherwise qualified to vote, shall be disqualified therefor on account of being a pauper; or, if a pauper, because of the non-payment of a poll tax.

Art. XXVIII., Amend. to Const. ratified Nov. 8, 1881.

Every male citizen of twenty-one years of age and upwards (except paupers, persons under guardianship, and persons excluded by article twenty of the amendments of the Constitution) who has resided within the Commonwealth one year, and within the town in which he claims the right to vote, six months next preceding a meeting for the transaction of town affairs, and who has been duly registered as a voter in said town, and who has paid by himself, or by his parent, master, or guardian, a State or county tax assessed upon him in any town within two years next preceding such meeting, and every citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as required by the Constitution, shall have a right to vote at such town-meetings upon all questions concerning town officers; and no other person shall be entitled to vote at such meeting; but nothing herein contained shall defeat the right of women duly qualified and assessed, to vote for members of school committees. St. 1890, c. 423, § 208.

Every woman who is a citizen of this Commonwealth, of twenty-one years of age and upwards (except paupers, persons under guardianship, and persons excluded by article twenty of the amendments to the Constitution), who has resided within the State one year, and within the city or town in which she claims a right to vote, six months next

preceding any election of school committee, and who has paid by herself, her parent, guardian, or trustee, a State, county, city, or town tax, assessed upon her or her trustee in this State within two years next preceding such election, shall have a right to vote in all such elections for members of school committees. St. 1884, c. 298, § 4.

In computing the age of a person, the day of his birth is included, and a part of a day is regarded as a whole day. A person born on the last day of January, 1868, arrived at the age of twenty-one years the moment he entered upon the day next preceding the last day of January, 1889. Two persons, one born on the 28th day of February, 1868, the other on the 29th day of the same month, arrived at the age of twenty-one at the same time, and each, if he had all other necessary qualifications, could vote at a meeting held on the 27th day of February, 1889. Chitty on Cont., 193, note *g*; Metcalf on Cont., 38; Bishop on Cont., § 1388; *Bardwell v. Purrington*, 107 Mass. 419.

Generally speaking, a pauper is a person receiving aid and assistance from the public for himself or his family, under the provisions made by law for the support and maintenance of the poor. And such person ceases to be a pauper as soon as further aid or assistance from the public, for himself or his family, is unnecessary and is

not furnished. Opinion of Justices, 11 Pick. 540; *Ibid.*, 124 Mass. 596.

No person who actually supports himself and his family shall be deemed to be a pauper by reason of the commitment of his wife, child, or other relative to a lunatic hospital or other institution of charity, reform, or correction, by order of a court or magistrate, and of his inability to maintain such wife, child, or relative therein; but nothing herein contained shall be construed to release him from liability for such maintenance. Pub. Sts., c. 83, § 3.

A married woman whose husband is living, is under no legal obligation to support their children. And if their children are supported by the town, she does not, by reason of such support, become a pauper. *Gleason v. Boston*, 144 Mass. 25.

The residence required as a qualification of a voter must be next preceding the meeting, and must have been continuous and uninterrupted. If a voter duly qualified in point of residence removes from the place of his domicile and becomes an inhabitant of some other town, he cannot vote in the place of his new domicile till he has resided there the required time; nor can he return to the town of his former domicile and there vote, without again qualifying himself by living there the required time. The time of residence requisite to qualify a voter will run on and be attained, notwithstanding that during a portion of the time he

may be otherwise disqualified. Cush. Parl. Law, §§ 41, 42, 43, 74; *Kinneen v. Wells*, 144 Mass. 497.

Persons who reside on lands purchased by or ceded to the United States for navy yards, forts, and arsenals, when there is no other reservation of jurisdiction to the State than that of a right to serve civil and criminal process on such lands, do not acquire, by residing on such lands, any right to vote. Opinion of Justices, 1 Met. 580.

Among citizens are included all native-born persons, foreign-born children of citizen parents, foreign-born persons who have been naturalized according to the laws of the United States, and minor children of naturalized parents.

CHAPTER II.

ORGANIZATION OF TOWN MEETINGS. — ELECTION AND DUTIES OF MODERATOR.

WHEN at a town meeting there is a vacancy in the office of town-clerk, or when he is not present, the selectmen shall call upon the qualified voters present to elect a clerk *pro tempore* in like manner as town-clerks are chosen. The selectmen shall sort and count the votes and declare the election of such clerk, who shall be sworn to discharge the duties of said office at such meeting, and be subject to like penalties for not discharging them, as town-clerks are for neglect of the like duties. Pub. Sts., c. 27, § 97.

During the election of a moderator the town-clerk if present shall preside, if he is absent or if there is no town-clerk the selectmen shall preside, if neither the selectmen nor town-clerk is present the justice of the peace calling said meeting shall preside ; and the town-clerk and selectmen and said justice of the peace when so presiding shall have the power and perform the duties of moderator. St. 1890, c. 423, § 215.

Selectmen, moderators, and town-clerks, when required to preside at town meetings, may appoint

ELECTION AND DUTIES OF MODERATOR. 21

tellers to aid them in checking the names of voters, or in assorting and counting votes. Such tellers shall be sworn to the faithful discharge of their duties. If such tellers are appointed by the selectmen, the oath may be administered by a justice of the peace. If they are appointed by the moderator or by the town-clerk, the oath must be administered by the town-clerk, who shall make a record of the taking of such oath. Pub. Sts., c. 155, § 2. St. 1890, c. 423, § 222.¹

If, at the time of the assembling of the voters, there is a vacancy in the office of town-clerk, or the town-clerk is absent, the first business is choosing a town-clerk. This election must be by ballot, and the check-list must be used. The selectmen have no authority to appoint a clerk for the town meeting, and if they have previously appointed a clerk as provided by Pub. Sts., c. 27, § 98, the clerk so appointed is not authorized to act as clerk of the meeting. *Attorney-General v. Crocker*, 138 Mass. 214.

At every town meeting, except meetings for the election of national, State, district, and county officers, the first business, except when no clerk is present, is the choice of a moderator. The

¹ Tellers appointed by moderators or by town-clerks were required to be sworn by the town-clerk. St. 1888, c. 229. It was provided by St. 1890, c. 419, approved June 16, 1890, that tellers hereafter appointed in towns might be sworn by the moderator. This last-named statute seems to have been repealed by St. 1890, c. 423, §§ 222-228. Approved June 21, 1890.

clerk shall preside, and may appoint tellers, who shall be sworn, to assist him. In the election of moderators of town meetings held for the choice of town officers the check-list shall be used. St. 1890, c. 423, §§ 214, 215, 216, 90, 222. The failure to use the check-list, when its use is required by law, is an informality, which the town has a right to correct at the same or at an adjourned meeting. If the moderator has not been legally chosen the town may treat not only his election but all subsequent action, including the election of officers, as a nullity, and may proceed anew to an election of another moderator, and other officers. Such new choice of a moderator is in substance the reconsideration of all that has been done while the meeting was without a legal moderator, and the town should proceed as if nothing had been done. *Attorney-General v. Simonds*, 111 Mass. 256.

The moderator shall preside in the meeting, may in open meeting administer the oaths of office to any town officer chosen thereat, shall regulate the business and proceedings of the meeting, decide all questions of order, and make public declaration of all votes passed. When a vote so declared by him is, immediately upon such declaration, questioned by seven or more voters present, he shall make the vote certain by polling the voters or by dividing the meeting, unless the town has by a previous vote or by its by-laws otherwise provided. St. 1890, c. 423, § 217.

The foregoing provisions of statute relating to the polling of the voters and dividing the meeting apply only when the vote is *viva voce*, or by show of hands, and not to votes taken by ballot.

When the voters are to be polled the moderator calls each name on the check-list, and the voter immediately makes answer to the moderator how he wishes to vote on the question then pending before the meeting. The moderator notes the answer. When all the names have been called, the moderator counts those voting for and those voting against the question, and declares the result.

When the vote is taken by dividing the meeting, the moderator directs those voters who are in favor of the pending question to go by themselves on one side of the house, and those who are opposed to it, to go by themselves on the other side of the house. Each side is then counted and the result declared.

No appeal lies from the decision of the moderator on a question of order. Notwithstanding the statute does not recognize the right of appeal, the moderator may, if he see fit so to do, submit the question of order to the meeting.

No person shall speak in a town meeting without leave of the moderator, nor while another person is speaking by his permission, and all persons shall at his request be silent. St. 1890, c. 423, § 218.

If a person behaves in a disorderly manner, and after notice from the moderator persists therein, the moderator may order him to withdraw from the meeting; and, on his refusal, may order the constables or any other persons to take him from the meeting, and confine him in some convenient place until the meeting is adjourned. The person so refusing to withdraw shall for such offence forfeit a sum not exceeding twenty dollars. St. 1890, c. 423, § 220.

Whoever in a town, ward, or precinct meeting, smokes, or has in his possession a lighted pipe, cigarette, or cigar, or carries into any such meeting or keeps therein any intoxicating liquor, shall be deemed guilty of disorderly conduct, and the moderator, warden, or other presiding officer at such meeting shall order such person to remove such pipe, cigarette, cigar, or liquor, or to withdraw himself from such place of meeting; and, on his refusing or declining to obey such order, shall direct any police officers, constables, or other persons present, to take him from the meeting, and confine him in some convenient place until the meeting is adjourned. The person so refusing shall for every such offence forfeit a sum not exceeding twenty dollars. St. 1890, c. 423, § 139.

The moderator or other presiding officer has no power or authority to inquire into and decide upon the qualifications of voters. He is furnished


with an alphabetical list of all persons qualified to vote at the meeting. This list is prepared by the registrars of voters. No name can be added to or taken from it after the polls are open. The moderator cannot refuse to receive the vote of any person whose name is on the list, nor can he receive the vote of any person, except as hereinafter stated, whose name is not on the list. St. 1890, c. 423, §§ 90, 223.

If a qualified voter of any city or town whose name was on the list of voters of such city or town for the preceding year, who has been assessed for a poll tax for the current year, and who has paid a State or county tax assessed upon him for the preceding or current year, finds after the close of registration that his name is not placed on the list of voters for the current year by reason of the same being omitted by clerical error or mistake from the list of polls as assessed and transmitted by the board of assessors to the board charged with the preparation of the list of voters, the board of assessors shall, upon the personal application of such voter, correct such omission or mistake, and give to him a certificate of such correction, to be presented by him in person to the board charged with the preparation of the list of voters, who shall, on the receipt thereof, place the name of such voter on the list of voters of the precinct or town in which he was entitled to be registered ; or if application

is made on the day of election the said board last mentioned shall give to such voter a certificate, on presentation of which to the election officers of his precinct or town he shall be allowed to vote therein; and such certificate shall be returned and preserved in like manner as the ballots cast in such precinct or town. St. 1890, c. 423, § 53.

If the name of a qualified voter shall be erroneously erased from the published list of voters, or omitted therefrom by clerical error, he may apply to the registrars of voters at any time before the closing of the polls for its restoration; and if he shall prove that his claim be valid, his name shall be restored to the list of voters, and he shall be given a certificate thereof, if such restoration is made on the day of election; on presentation of which to the officers of the precinct in which he was entitled to be registered, he shall be allowed to vote therein; and the certificate shall be returned and preserved in like manner with the ballots cast in said precinct. St. 1890, c. 423, § 55.

The check-list is not conclusive evidence of a person's right to vote. The registrars may have erred in entering thereon, in removing or not removing therefrom, the name of some individual. And a person whose name is on the list may incur a penalty, if, knowing that he is not a qualified voter, he wilfully votes for



any officers then to be chosen, or votes upon the question of granting licenses for the sale of intoxicating liquor. St. 1885, c. 351, § 2; St. 1887, c. 443, § 5; St. 1890, c. 423, § 129. *Harris v. Whitcomb*, 4 Gray, 433; *Commonwealth v. Howe*, 144 Mass. 144.

The method of transacting business in town meeting is not governed by any fixed provisions of statute, nor does the validity of the vote depend upon the observance or non-observance of parliamentary law. While it is prudent to follow well-established forms and rules of procedure, it is not necessary. Town meetings like all other deliberative bodies may adopt rules for the ordering of business, and these rules may be set aside, waived, or changed. The all-essential thing is to get at the will of the majority of the voters upon such subject-matters as are properly before the meeting. *Bennett v. New Bedford*, 110 Mass. 433; *Holt v. Somerville*, 127 Mass. 408; Cooley Const. Lim., *131.

A moderator or other presiding officer or teller who at a town meeting, before the poll is closed and without the consent of the voter, with a view to ascertain the candidate voted for by him, reads, examines, or permits to be read or examined, the names written on such voter's ballot, shall forfeit a sum not exceeding fifty dollars. St. 1890, c. 423, § 221.

CHAPTER III.

ELECTION AND APPOINTMENT OF TOWN
OFFICERS.

A TOWN officer must be an inhabitant of the town, a citizen, twenty-one years of age or upwards, able to read the constitution in the English language, and write his name (unless physically disabled, or was a voter, or was sixty years or more of age, May 1, 1857, the time of the ratification of article twenty of the amendments to the constitution) and with the exception of the school committee, overseers of the poor, and trustees of the free public library, must be of the male sex. Women otherwise qualified are eligible as members of the school committee, as overseers of the poor, and as trustees of the free public library. Opinion of the Justices, 7 Mass. 523; *Ibid.*, 122 Mass. 594; *Barre v. Greenwich*, 1 Pick. 129; *Robinson's Case*, 131 Mass. 376; Cush. Parl. Law, 13, 24; Cool. Con. Lim. *29, *599; Pub. Sts., c. 44, § 21; St. 1886, c. 150; St. 1888, c. 304, § 2.

A person removing from the town in which he holds a town office thereby vacates such office. Pub. Sts., c. 27, § 89.

SCHOOL COMMITTEE.

Every town shall, at its annual meeting, or at a meeting appointed and notified by the selectmen for the purpose and held in the same month in which the annual meeting occurs, choose by written ballots a school committee, which shall have the general charge and superintendence of all the public schools in the town. Said committee shall consist of any number of persons divisible by three which said town has decided to elect, one-third thereof to be elected annually, and to continue in office three years. No person shall be deemed to be ineligible to serve upon a school committee by reason of sex. If a town fails or neglects to choose such committee, an election at a subsequent meeting shall be valid. Pub. Sts., c. 44, § 21.

A town may, at its annual meeting, vote to increase or diminish the number of its school committee. Such increase shall be made by adding one or more to each class, to hold office according to the tenure of the class to which they are severally chosen. Such diminution shall be made by choosing, annually, such number as will in three years effect it, and a vote to diminish shall remain in force until the diminution under it is accomplished. Pub. Sts., c. 44, § 26.

SELECTMEN.

A town which, at an annual meeting, has accepted chapter 255 of the statutes of the year 1878, or this and the four following sections, and which has not revoked such acceptance, may, at such annual meeting or at any subsequent one, elect its selectmen for the period of three years in the following manner; namely, if the selectmen are three in number, it may elect one selectman for one year, one for two years, and one for three years; and thereafter at each annual meeting may elect one selectman to serve for three years. If the selectmen are five in number, it may elect one selectman for one year, two selectmen for two years, and two for three years; and at each annual meeting thereafter it may elect one or two to serve for three years, as the term of office of one or two expires in that year. If the selectmen are seven in number, it may elect two selectmen for one year, two for two years, and three for three years; and at each annual meeting thereafter, it may elect two or three to serve for three years, as the term of office of two or three expires in that year. If the selectmen are nine in number, it may elect three selectmen for one year, three for two years, and three for three years; and at each annual meeting thereafter may elect three to serve for three years. Pub. Sts., c. 27, § 64.

ASSESSORS.

A town which, at an annual meeting, has accepted the provisions, in regard to assessors, of chapter 255 of the acts of the year 1878, or the provisions of sections 65, 66, 67, and 68 of chapter 27 of the Public Statutes, and in which such acceptance has not been revoked, or which shall at an annual meeting accept the provisions of this and the three following sections, may elect at such annual meeting, or at any subsequent annual meeting, three, five, seven, or nine assessors, in the manner and for the terms respectively provided in the preceding section for electing a like number of selectmen; or it may elect four assessors, two for one year, and two for two years; and at each annual meeting thereafter it may elect two to serve for two years. Pub. Sts., c. 27, § 65, amended by St. 1883, c. 208, § 1.


A town which votes at an annual meeting to increase or diminish the number of its selectmen or assessors may elect or omit to elect such a number at that or at any annual meeting thereafter as will make the board of the required number, with terms of office expiring in the manner provided in the two preceding sections, but shall not so diminish the number as to prevent the election of one at least in every year. Pub. Sts., c. 27, § 66.

Vacancies in the board of assessors or of selectmen constituted in accordance with the provisions of the three preceding sections, may be filled in the manner provided by law for filling other vacancies in such boards, and the person chosen to fill a vacancy shall hold office during the unexpired term of the member whose place he fills. Pub. Sts., c. 27, § 67.

The acceptance of chapter 255 of the statutes of the year 1878 or of this and the four preceding sections, may be revoked by a town at any subsequent annual meeting, and thereupon the same shall cease to be operative in such town; but such revocation shall not affect the term of office of selectmen or assessors previously chosen. Pub. Sts., c. 27, § 68.

OVERSEERS OF THE POOR.

A town which has accepted the provisions of chapter 186 of the acts of the year 1877, or of sections 69, 70, 71, 72, and 73, of chapter 27 of the Public Statutes, and which has not revoked such acceptance, or which shall at an annual meeting accept the provisions of this and the four following sections, may at such annual meeting or at any subsequent annual meeting elect by ballot three, five, seven, or nine overseers of the poor in the manner and for the terms respectively provided in section 64 for electing a like number of selectmen; and the persons so chosen shall



constitute the board of overseers of the poor in such town. Pub. Sts., c. 27, § 69, amended by St. 1883, c. 203, § 2.

The members of such boards of overseers shall hold office until others are elected and qualified in their stead; vacancies may be filled by a new choice at a legal meeting, and the person chosen to fill a vacancy shall hold office during the unexpired term, and until another is chosen and qualified in his stead. Pub. Sts., c. 27, § 70.

Such boards shall annually, within seven days after the annual town meeting, meet and choose a chairman and a secretary, which last named officer may be from their own number or otherwise. Pub. Sts., c. 27, § 71.

They shall cause books to be kept, wherein shall be entered in a neat and methodical style, and so arranged as to be readily referred to upon said books, the information required by law in regard to all needy persons aided under their direction, and all further information as to every case of relief given, asked for, or refused, the preservation of which may be of importance to their towns or to the Commonwealth, stating the amount and kind of aid given, and the reasons for giving such aid or refusing the same. Pub. Sts., c. 27, § 72.

The acceptance of chapter 186 of the statutes of the year 1887, and of this and the four preceding sections, may be revoked by any town

at any subsequent annual meeting thereof, and thereupon the same shall cease to be operative in such town. Pub. Sts., c. 27, § 73.

ROAD COMMISSIONERS.

A town which has accepted the provisions of chapter 158 of the statutes of the year 1871, or of this and the three following sections, and which has not revoked such acceptance, may choose by ballot three persons, who shall constitute its board of road commissioners, one for one year, one for two years, and one for three years from the date of the annual meeting at which they are chosen ; or, if chosen at a meeting other than the annual meeting, then for one, two, and three years respectively from the date of the annual meeting next preceding said election and until their successors are chosen and qualified ; and at every subsequent annual meeting such town shall choose one member of said board, to serve for three years ; but such acceptance may at any annual meeting thereafter be revoked, and said board abolished. Pub. Sts., c. 27, § 74.

Said road commissioners, in matters concerning streets, ways, bridges, monuments at the termini and angles of roads, guide-posts, sidewalks, shade-trees, sewers, and drains, shall exclusively have the powers and be subject to the duties, liabilities, and penalties of selectmen and surveyors of high-

ways, and shall have all the powers and privileges conferred upon selectmen in section 17 of chapter 53 in relation to removing buildings in public streets and highways. Pub. Sts., c. 27, § 75.

They shall be sworn, and shall receive such compensation for their services as the town may determine. Pub. Sts., c. 27, § 76.

Vacancies in a board of road commissioners shall be filled by the selectmen, and a person appointed to fill a vacancy shall hold his office until another is chosen at the next annual meeting and qualified in his stead. Pub. Sts., c. 27, § 76.

At the annual meeting every town (except as is otherwise provided in the fourteen preceding sections) shall choose from the inhabitants thereof the following town officers, who shall serve during the year, and until others are chosen and qualified in their stead : —

A town-clerk, who, if present, shall be forthwith sworn, either by the moderator or a justice of the peace ;

Three, five, seven, or nine selectmen ;

Three or more assessors, and if the town deems it expedient, three or more assistant assessors ;

Three or more overseers of the poor ;

A town treasurer ;

One or more surveyors of highways ;

Constables, who shall also be collectors of taxes unless other persons are specially chosen collectors ;

Field drivers ;

Two or more fence viewers, and

All other usual town officers. Pub. Sts., c. 27, § 78.

The selectmen shall be assessors of taxes and overseers of the poor in towns where other persons are not specially chosen to those offices, and when acting as assessors they shall take the oath required of assessors. Pub. Sts., c. 27, § 101.

Towns are required to elect: One or more auditors, who shall not hold any other town office. St. 1888, c. 221. Two or more cullers of staves and hoops in every maritime place from which staves are usually exported. Pub. Sts., c. 60, § 41. One or more measurers of wood and bark. Towns may by vote, fixing the number to be chosen, delegate the appointment of such measurers to the selectmen. Pub. Sts., c. 60, § 72.

COMMISSIONERS OF SINKING FUND.

A town establishing a sinking fund under the provisions of this chapter shall, at the time of establishing the same, elect by ballot three or six commissioners of its sinking funds; and a city establishing such a fund shall elect such commissioners by a concurrent vote of both branches of the city council. One-third of the number shall be elected for one, two, and three years respectively; and annually thereafter there shall be elected, for a term of three years, a

number equal to the number whose term of service then expires. Vacancies occurring in the board shall, in towns, be filled by the remaining member or members and the selectmen, by a majority of ballots of the officers so entitled to vote, at a meeting called for the purpose by the selectmen; and in cities, by the city council in the manner herein provided for the election of the commissioners. The remaining member or members shall in case of a vacancy exercise the powers of the board until the vacancy is filled. The city or town treasurer shall not be eligible as such commissioner, and the acceptance of the office of treasurer by a commissioner already elected shall operate as a resignation of the office of commissioner. But the foregoing provisions as to the mode of electing commissioners and filling vacancies shall not apply to boards of sinking fund commissioners established before the thirteenth day of June in the year 1875. Pub. Sts., c. 29, § 10.

KEEPER OF POUND.

Each city and town shall annually appoint a suitable keeper of each pound therein. Pub. Sts., c. 36, § 22.

SURVEYORS OF LUMBER.

Except in the county of Suffolk, the cities of Cambridge, Somerville, and Quincy, and the

towns of Medford, Brookline, and Watertown, towns and the city councils of cities shall annually elect one or more surveyors of lumber, who shall be sworn to the faithful discharge of their duties. Pub. Sts., c. 63, §§ 1, 6; St. 1890, c. 159.

TRUSTEES OF PUBLIC LIBRARY.

Every town which raises or appropriates money for the support of a free public library, or free public library and reading-room that is owned by the town, shall at its annual meeting, or at a legal town meeting appointed and notified for that purpose by the selectmen, elect a board of trustees, except in cases where such library has been or may be acquired by the town, in whole or in part, by some donation or bequest containing other conditions or provisions for the elections of its trustees or for its care and management, which conditions have been accepted and agreed to by vote of the town. St. 1888, c. 304, § 1. Said board of trustees shall consist of any number of persons divisible by three, which the town may decide to elect, one-third thereof to be elected annually and to continue in office for three years, except that the town shall first elect one-third of the trustees for one year, one-third for two years, and one-third for three years, and thereafter one-third the number annually for the term of three years. No person shall be ineligible to serve upon said board of trustees

by reason of sex. Such board of trustees shall be elected by ballot, and shall organize annually by the choice of a chairman and secretary from their own number ; provided, any town, having a free public library, which has heretofore elected a board of trustees to manage the same, consisting of a number divisible by three, and has heretofore elected annually one-third of said board for three years, may continue to elect annually one-third of said board, and the trustees in office shall hold their offices until the term for which they were elected shall expire, unless the town shall vote otherwise. *Ibid.*, c. 304, § 2, amended by St. 1889, c. 112.

If any person elected a member of the board of trustees, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if any member declines further service, or from change of residence or otherwise, becomes unable to attend to the duties of the board, the remaining members shall in writing give notice of the fact to the selectmen of the town, and the two boards may thereupon, after giving public notice of at least one week, proceed to fill such vacancy until the next annual town meeting ; and a majority of the ballots of persons entitled to vote shall be necessary to an election. St. 1888, c. 304, § 3.

COLLECTORS OF TAXES.

Towns may choose by ballot suitable persons to be collectors of taxes therein. If the persons chosen refuse to serve, or if no person is elected or appointed, the constables of the town shall be the collectors of taxes. Pub. Sts., c. 27, § 123. Collectors shall be paid such compensation for their services as their cities or towns shall determine. In towns they shall be elected by ballot, and their compensation shall be fixed by the towns at the annual meeting; or at a special meeting called for that purpose. St. 1888, c. 390, § 93.

BOARD OF HEALTH.

A town, respecting which no provision is made by special law for choosing a board of health, may, at its annual meeting or at a meeting legally warned for the purpose, choose a board of health by ballot, to consist of not less than three nor more than nine persons; or may choose a health officer. If no such board or officer is chosen, the selectmen shall be the board of health. Pub. Sts., c. 80, § 3.

DIRECTORS OF WORKHOUSE AND ALMSHOUSE.

Every city or town having a workhouse or alms house may annually choose three, five, seven, or more directors, who shall have the inspection

and government thereof, and who may appoint a master and necessary assistants for the more immediate care and superintendence of the persons received or employed therein. Where such directors are not specially chosen, the overseers of the poor shall be the directors. Pub. Sts., c. 33, § 3.

Any number of cities or towns may, at their joint charge and for their common use, erect or provide a workhouse or almshouse, and purchase land for the use thereof. Pub. Sts., c. 33, § 5. The ordering, governing, and repairing of such house, the appointment of a master and necessary assistants, and the power of removing them for misconduct, incapacity, or other sufficient cause, shall be vested in a joint board of directors, who shall be chosen annually by the several places interested. Pub. Sts., c. 33, § 6. Unless all the places interested in such house agree to choose a different number, each of them shall choose three members of the board; and in case of the death of a director, or of his removal from the place for which he was chosen, the vacancy may be supplied by such place. If a place neglects to choose directors, those chosen by the other places shall have the whole charge of the house. Pub. Sts., c. 33, § 7.

INSPECTORS OF LIME.


Each city and town in which lime is manufactured, or into which it is imported, may annually choose one or more inspectors of lime, who shall be sworn and shall inspect all lime manufactured in such place at the time when it is filled at the kiln, and all lime imported or sold therein. Pub. Sts., c. 60, § 46.

REGISTRAR OF BIRTHS, MARRIAGES, AND
DEATHS.

A city or town containing more than ten thousand inhabitants may choose a person other than the clerk to be registrar of births, marriages, and deaths, who shall be sworn, and to whom all the provisions of chapter 32 of the Public Statutes concerning clerks shall apply. The returns and notices required to be made and given to clerks shall be made and given to such registrars under like penalties. Pub. Sts., c. 32, § 16.

FOREST FIREWARDS.

In towns of less than three hundred voters, the towns may vote that the selectmen may serve as forest firewards. St. 1886, c. 296, § 2.



PARK COMMISSIONERS.

Any town in this Commonwealth which accepts the provisions of this act in the manner hereinafter prescribed, may, at a legal meeting called for the purpose, elect three competent persons who shall constitute a board of park commissioners for such town, and may prescribe their terms of office. No person shall be such commissioner who is at the same time a selectman, or treasurer or clerk of such town; and any such commissioner may be removed by a vote of two-thirds of the legal voters of such town, at a legal town meeting called for the purpose. St. 1882, c. 154, § 1. St. 1890, c. 240. Any vacancy occurring in such board shall be filled for the residue of the term of the commissioner whose place is to be filled in the manner in which such commissioner was originally appointed. Such commissioners shall serve without compensation. St. 1882, c. 154, § 2.

SUPERINTENDENT OF TREES.

The officer appointed to have the care of the trees belonging to a city or town and his assistants, but no other person, except as is provided in the following section and in section 10 of chapter 54, may, and when required by the surveyors of highways or road commissioners, shall, trim or lop off trees and bushes standing

in highways, townways, streets, or lanes, and, when ordered by vote of the mayor and aldermen, selectmen, or road commissioners, passed after public notice and hearing, shall cut down and remove such trees; and the surveyors of highways and road commissioners shall forthwith cause to be dug up and removed whatever obstructs such ways, or endangers, hinders, or incommodes persons travelling thereon; and shall forthwith cause snow to be removed from such ways or to be so trodden down as to make the ways reasonably safe and convenient. St. 1885, c. 123, § 2, amending Pub. Sts., c. 52, § 10.


There is no law expressly authorizing towns to elect a superintendent of trees, but the inference from the foregoing statute is that towns may elect such an officer.

SUPERINTENDENT OF PUBLIC BATHS AND WASH-HOUSES.

Towns which have accepted the statutes relating to public baths and wash-houses may appoint officers therefor. Pub. Sts., c. 27, § 14.

WATCHMEN.

A city or town may establish and keep a watch and determine the number and qualifications of the watchmen. The mayor and aldermen or selectmen shall appoint a suitable person to be



officer of the watch, and shall direct the manner in which watchmen shall be equipped. The expenses of the watch shall be defrayed in like manner as other town charges. Pub. Sts., c. 34, § 1.

CHAPTER IV.

OFFICERS TO BE APPOINTED BY SELECTMEN.

Forest Firewards. — In all towns it shall be the duty of the selectmen to appoint annually, in March or April, one or more persons to be called forest firewards, who shall, in respect to fires in woodlands, have and exercise the powers and duties prescribed for firewards in chapter 35 of the Public Statutes. In towns of less than three hundred voters, the selectmen may serve as forest firewards if the towns shall so elect. St. 1886, c. 296, § 2.

Fish-Wardens. — The mayor and aldermen of cities and the selectmen of towns bordering on the Connecticut or Merrimack River shall appoint and fix the compensation of one or more suitable persons as fish-wardens within their respective cities and towns, who shall, respectively, make complaint of all offences under sections 32, 35, and 40 of chapter 91 of the Public Statutes. Pub. Sts., c. 91, § 42.

Inspector of Oil. — The mayor and aldermen of every city, and the selectmen of every town of more than fifteen hundred inhabitants, and of


every town of less than fifteen hundred inhabitants, upon the written application of five or more citizens of such town therefor, shall appoint annually one or more suitable persons, not interested in the sale of crude petroleum or in the sale or manufacture of petroleum or earth-rock oil, or in any of their products, to be inspector or inspectors thereof in said city or town, and may fix their compensation, to be paid by persons requiring their services under the provisions of this chapter. Such inspectors, before entering upon the duties of their office, shall be sworn, and any inspector guilty of fraud, deceit, or culpable negligence in the performance of his duties, shall be punished by fine of not more than one hundred dollars, or by imprisonment in the county jail or house of correction for not more than one month, or by both said penalties, in the discretion of the court. Pub. Sts., c. 59, § 6.

Keeper of Lockup. — The selectmen in towns required to maintain a lockup shall annually appoint a keeper, who shall have the custody and care of the same and of persons committed thereto, and who shall signify his acceptance of the appointment within three days after he has notice thereof, and shall be sworn. Such appointment shall be in writing, and for the term of one year, unless sooner revoked; and it shall be recorded in the town-clerk's office. Pub. Sts., c. 27, § 33.

Measurers of Grain. — The mayor and aldermen of cities and selectmen of towns shall annually appoint one or more measurers of grain; and when but one is appointed by them, they may authorize him to appoint deputy measurers. Pub. Sts., c. 60, § 23.

Measurers of Upper Leather. — The mayor and aldermen or selectmen of any place, when thereto requested by two or more citizens thereof, shall annually in April appoint one or more persons as measurers of upper leather, who shall be sworn. Pub. Sts., c. 62, § 1.

Neglected Children under Sixteen Years of Age. — The selectmen of towns containing five thousand or more inhabitants, and of other towns availing themselves of the provisions of sections 18 to 21, inclusive, of chapter 48 of the Public Statutes, shall appoint suitable persons to make complaints of violations of by-laws adopted under the Pub. Sts., c. 48, § 18; and the persons so appointed, and the officers and duly appointed agents of the Massachusetts Society for the Prevention of Cruelty to Children, shall alone be authorized to make such complaints and carry into execution the judgments thereon; and the persons so appointed shall alone be authorized to make complaints under section 20 of chapter 48 of the Public Statutes. Pub. Sts., c. 48, § 19; St. 1883, c. 245.



Registrar of Voters. — The selectmen of each town having three hundred or more voters, by a writing signed by them or by a majority of them, and filed with the town-clerk, shall annually, in March or April, appoint one able and discreet person, a voter in said town, who shall hold no other office or position by election or appointment in said town, to be a registrar of voters, for the term of three years from the first day of May then next ensuing, and until another is appointed in his place. In case of a vacancy occurring by reason of the death, resignation, or removal from office of any of the registrars appointed as aforesaid during the term for which he is appointed, the selectmen in the manner aforesaid shall appoint a person qualified as aforesaid, for the residue of said term. The members of said board shall equally represent the two political parties which cast the largest number of votes in the Commonwealth at the annual election next preceding their appointment, and not more than two of them shall be of the same political party. The city or town clerk shall act as clerk of the said board, shall keep a full and faithful record of its proceedings, and procure the serving or posting of such notices as the registrars may require. St. 1890, c. 423, §§ 18, 59. Whenever any member of the board of registrars of voters, provided for by section 20 of chapter 423 of the acts of the year 1890,

shall be incapacitated by sickness or other cause from performing the duties of his office, or shall be absent, at the time of any meeting of said board, from the city or town in which he is appointed, the selectmen of such town, by a writing signed by them or a majority of them, or the mayor of such city, may, upon the request in writing of a majority of the remaining members of said board of registrars, appoint some person, qualified as provided in said section, temporarily to fill the vacancy caused as aforesaid. The person so appointed shall be of the same political party as the member of said board of registrars whose position he temporarily fills. Such temporary registrar shall take and subscribe an oath faithfully to perform the duties of his office; shall perform the same duties, have the same powers, and be subject to the same restrictions and penalties during the term he holds his office as are now provided by law for duly appointed and qualified registrars of voters. St. 1890, c. 423, § 20.

Towns having less than three hundred registered voters shall be exempt from the requirements of section 18 of this chapter, and in such towns the selectmen and town-clerk shall constitute a board of registrars of voters, and shall perform all the duties and be subject to all the liabilities imposed by this act, and acts in amendment hereof, upon registrars of voters.

But whenever, in any town now exempted by this section, the register of voters shall be found to contain as many as three hundred names, said section 14 shall apply, and, in the month of March or of April next thereafter, a board of registrars shall be appointed. St. 1890, c. 423, § 59.

Sealers of Weights and Measures. — The mayor and aldermen of every city and the selectmen of every town shall annually in March or April appoint one or more sealers of weights and measures, or one sealer and one or more deputy-sealers to act under the direction of the sealer, and they may also appoint gaugers of liquid measures; and such sealers, deputy-sealers, and gaugers, they may at any time remove, and appoint others in their places. Pub. Sts., c. 65, § 8; St. 1882, c. 42.

Superintendent of Streets. — As soon after the annual town meeting as may be, the board of selectmen shall appoint some suitable person to be a superintendent of streets, who shall serve during the year and until his successor is appointed and qualified in his stead.

When in the judgment of the selectmen the best interests of the town so require, said superintendent may be removed from his office by said board; and whenever a vacancy shall occur in the office of superintendent of streets, either by removal, resignation, or otherwise, the board

of selectmen shall appoint some suitable person to fill the vacancy, who shall hold his office until his successor is appointed and qualified in his stead. St. 1889, c. 98, §§ 1, 4.

Any town which has accepted or shall hereafter accept the provisions of chapter 158 of the acts of the year 1871, or of sections 74, 75, 76, and 77 of chapter 27 of the Public Statutes, shall be exempt from the provisions of St. 1889, c. 98, until such acceptance is revoked by such town. St. 1889, c. 98, § 6, amended by St. 1889, c. 178, § 1. Said superintendent of streets shall, under the direction of the selectmen, have full charge of all repairs and labor required of towns upon streets, ways, bridges, and sidewalks, and the care and preservation of shade-trees, and in relation thereto shall have all the powers and be subject to the duties, liabilities, and penalties now or hereafter imposed upon surveyors of highways. St. 1889, c. 98, § 2.

In towns where no other provision is made, said superintendent of streets shall have full charge of all repairs required of towns upon sewers and drains, and in relation thereto shall have the same powers, and be subject to the same duties, liabilities, and penalties as are imposed upon said superintendent in section 2 of this act, in relation to the repairs of streets, ways, sidewalks, and bridges. St. 1889, c. 98, § 3.

Weighers of Beef. — In each city and town where beef cattle are sold for the purpose of market or barrelling, the mayor and aldermen or selectmen shall appoint one or more persons, conveniently situated in such city or town, and not dealers in cattle, to be weighers of beef, who shall be sworn. Pub. Sts., c. 60, § 1.

Weighers of Boilers and Heavy Machinery. — The mayor and aldermen or selectmen of any city or town in which boilers and heavy machinery are sold, shall appoint one or more persons, not engaged in the manufacture or sale thereof, to be weighers of boilers and heavy machinery, who shall be sworn to the faithful discharge of their duties, and shall be removable at the pleasure of the board appointing them. They shall receive such fees as may be ordered by such board, which fees shall be paid by the seller. Pub. Sts., c. 65, § 30.

Weighers of Coal. — The mayor and aldermen or selectmen of every place where anthracite, bituminous, or mineral coal is sold, shall appoint suitable persons, one or more of whom shall not be engaged in the business of selling coal, to be weighers of coal, who shall be sworn and be removable at the pleasure of the board appointing them, and all coal shall be weighed by such sworn weighers. Pub. Sts., c. 60, § 80.

Weighers of Fish. — There shall be appointed annually by the mayor and board of aldermen

of cities and by the selectmen of towns, in cities and towns where salt-water fish are landed from vessels, a public weigher of fish, who shall hold office for one year from the time of his appointment or until his successor is appointed, and who shall before entering upon his duties be sworn to the faithful performance thereof, and shall give bond so conditioned with sureties in the sum of five thousand dollars.

He may appoint, subject to the approval of the mayor of the city, or the chairman of the board of selectmen of the town, as the case may be, assistants or deputy-weighers, for whose official conduct he shall be held answerable; who shall, before entering upon their duties, be sworn to the faithful performance thereof, and from each of whom such weigher shall exact a bond so conditioned with sureties in the sum of one thousand dollars. The weigher and his assistants or deputies shall not be interested directly nor indirectly in the buying or selling of fish. St. 1888, c. 163, §§ 1, 2.

Weighers of Vessels. — The mayor and aldermen or selectmen of cities and towns, where lighters or other vessels are employed in transporting stones, gravel, or sand, shall annually in March or April appoint one or more weighers of vessels, who shall be sworn. Pub. Sts., c. 69, § 13.

CHAPTER V.

OFFICERS WHO MAY BE APPOINTED.

Collector of Taxes. — See page 77.

Enginemen and Hose-men. — The mayor and aldermen or selectmen of places provided with fire-engines may appoint suitable persons for enginemen, who shall continue in office during the pleasure of the authority appointing them. The mayor and aldermen or selectmen may select from the enginemen any number for each engine, who shall, under the direction of the firewards, attend fires with axes, fire-hooks, fire-sails, and ladders, and do such further duty as the mayor and aldermen or selectmen shall from time to time prescribe; and they shall be entitled to all the exemptions and privileges of other enginemen.

When the proprietors of an engine apply to the mayor and aldermen or selectmen of a city or town in which the engine is owned, setting forth that they desire that the same should be employed for the benefit of such place, the mayor and aldermen or selectmen may appoint enginemen in the same manner, with the same privi-

leges, and subject to the same regulations, as if the engine belonged to the place; and if the proprietors do not agree as to the place where the engine shall be kept, the mayor and aldermen or selectmen shall determine such place.

Selectmen, engineers of fire departments, and the board of engineers of fire-districts, may, in towns having one or more steam fire-engines, or in which water for extinguishing fires is supplied from hydrants or reservoirs, appoint to each hose-carriage such number of men, not exceeding twenty, as they deem expedient. If an engineman is negligent in his duties, the mayor and aldermen, or selectmen, shall discharge him and appoint another in his stead. Pub. Sts., c. 35, §§ 12, 14, 17, 20, 21.

Engineers. — The selectmen of towns in which a fire department has been established, as provided in chapter 35 of the Public Statutes, shall annually in April appoint for such department as many engineers, not exceeding twelve, as they may think expedient, for the term of one year from the first day of May following, and until others are appointed in their stead, but the selectmen may, for cause, remove from office any engineer, after seven days' notice to him and hearing; and the selectmen shall fill all vacancies. Pub. Sts., c. 35, § 29; St. 1886, c. 113.

Firewards. — The selectmen of a town may annually, in March or April, appoint such num-

ber of suitable persons to be firewards as they deem necessary; and each person so appointed shall forthwith have notice thereof, and within seven days after such notice shall enter with the town-clerk his acceptance or refusal of the office. Whoever neglects so to enter his acceptance or refusal shall, unless excused by the selectmen, forfeit ten dollars. Pub. Sts., c. 35, § 1.

Gaugers of Liquid Measures. — See page 51.

Harbor-Masters. — A harbor-master may be appointed for any harbor in the Commonwealth by the mayor and aldermen of the city, or by the selectmen of the town, in which such harbor is situated. Such mayor and aldermen or selectmen shall fix the compensation of such harbor-master, to be paid by their city or town, and the harbor-master so appointed shall continue in office until the appointment of his successor; but this section shall not apply to any harbor for which other provision has been made for the appointment of a harbor-master. Pub. Sts., c. 69, § 25.

Harbor-Master's Assistants. — Assistant harbor-masters may be appointed for any harbor in the Commonwealth by the mayor and aldermen of the city, or by the selectmen of the town in which such harbor is situated. Such mayor and aldermen or selectmen shall fix the compensation of such assistants, to be paid by their

respective city or town, and the assistants so appointed shall continue in office until the appointment of their successors or until their appointments shall have been revoked. St. 1882, c. 216, § 1.

Highway Surveyor, Fence Viewer, Constable, and Field Driver. — When a vacancy occurs in the office of highway surveyor, fence viewer, constable, or field driver, the selectmen may, in their discretion, appoint some suitable person to fill the vacancy. Pub. Sts., c. 27, § 86.

Inspectors of Hay and Straw. — The mayor and aldermen and selectmen of each city and town in which pressed or bundled hay or straw is sold, may, on the petition of ten or more legal voters of such city or town, annually appoint one or more persons as inspectors of pressed or bundled hay and straw, who shall be sworn; may remove any inspector so appointed; and may fill any vacancy that may occur from death or otherwise. Pub. Sts., c. 60, § 35.

Inspectors of Milk. — The mayor and aldermen of cities shall, and the selectmen of towns may, annually appoint one or more persons to be inspectors of milk for their respective places, who shall be sworn before entering upon the duties of their office. Pub. Sts., c. 57, § 1.


Inspector of Provisions and of Animals intended for Slaughter. — The mayor and aldermen of cities and the selectmen of towns may annually appoint

one or more persons to be inspectors of provisions and of animals intended for slaughter. Such inspectors shall be sworn faithfully to discharge the duties of their office, and shall receive such compensation as the city council or the selectmen shall determine. Pub. Sts., c. 58, § 1.

Inspectors of Vinegar. — The mayor and aldermen of cities shall, and the selectmen of towns may, annually appoint one or more persons to be inspectors of vinegar for their respective places, who shall be sworn before entering upon their duties. Pub. Sts., c. 60, § 71.

Police Officers. — The selectmen may at any time appoint police officers, with all or any of the powers of constables except the power of serving and executing civil process, who shall hold their offices during the pleasure of the selectmen, and who may carry such weapons, when on duty, as the selectmen shall authorize. Pub. Sts., c. 27, § 85. Such police officer need not be sworn. *Commonwealth v. Cushing*, 99 Mass. 592.

Probation Officer. — The aldermen of any city except Boston, and the selectmen of any town may establish the office of probation officer, and fix his salary. When the office has been established, the officer may be appointed by the mayor, subject to the confirmation of the aldermen, or by the selectmen, and shall hold his office until removed by the aldermen or selectmen. He shall in the execution of his official duties have the



powers of police officers, and may be a member of the police force of his city or town. The city or town clerk shall forthwith notify the commissioners of prisons of any appointment under this section. Pub. Sts., c. 212, § 74.


Railroad and Steamboat Police. — The mayor and aldermen of a city, or the selectmen of a town, upon the petition of a railroad corporation having a passenger station therein, or a common carrier of passengers by water for hire, having a usual place of receiving or discharging passengers therein, may appoint as many as they deem proper of the persons in the employment of said petitioner as police officers for the purposes and with the powers hereinafter set forth. A copy of the record of all such appointments shall be filed by the petitioner with the clerk of each place in which such corporation draws cars by its own motive-power, or such carrier is accustomed to receive or discharge passengers, and in which it is intended that such police shall act; and the filing of such copy shall constitute the persons named therein railroad or steamboat police, respectively, within such towns or cities, and upon the boats or vessels of such carriers by water while within the boundaries of the Commonwealth. Pub. Sts., c. 103, §§ 13, 14.

Such police officers shall be sworn before any justice of the peace, and shall hold their offices until their appointment is revoked by the mayor

and aldermen of the city, or by the selectmen of the town, where they are appointed; but such petitioner, upon ceasing to require the services of any such officer, shall file a notice to that effect in the several offices in which notice of such appointment was originally filed, and thereupon the power of such officer shall cease. Pub. Sts., c. 103, § 15; St. 1883, c. 65.

Sealer of Linear Measure. — All apparatus for linear measurements used by a land surveyor shall be tested and proved once in each year by the sealer of weights and measures in the town or city where such surveyor resides, or where he has his office, and all chains, tapes, or other implements used for linear measurements that cannot be made to conform to the standard shall be marked condemned, or CD., by the sealer of weights and measures, and no surveyor shall thereafter use the same for measuring land, under the penalty of twenty dollars for each offence. The mayor and aldermen of a city, or the selectmen of a town, may, if they deem it expedient so to do, appoint a suitable and competent person, other than the sealer of weights and measures, to test and prove such measuring implements. Pub. Sts., c. 64, §§ 6, 7.

Superintendent of Hay Scales. — In cities in which the city council and in towns in which the inhabitants adopt this and the two following sections, or have adopted the corresponding pro-



visions of earlier laws, the mayor and aldermen, and selectmen, may from time to time appoint, for a term not exceeding one year, some person or persons who shall have the superintendence of the hay scales belonging to such city or town, and shall weigh hay offered for sale therein, and any other article offered to be weighed. Such weighers of hay may be at any time removed by such mayor and aldermen or selectmen. Pub. Sts., c. 60, § 32.


Superintendent of Schools. — A city by ordinance, and a town by vote, may require the school committee annually to appoint a superintendent, who, under the direction and control of said committee, shall have the care and supervision of the public schools; or the school committee of any city without such ordinance may appoint a superintendent by a majority vote of the whole board; the compensation of the superintendent shall not be less than one dollar and fifty cents for each day of actual service, and shall be determined by the school committee, and, in cities without such ordinance, by a majority vote of the whole board; in every city in which such ordinance is in force or in which a superintendent is appointed, and in every town in which a superintendent is appointed and which does not provide otherwise by vote, the school committee shall receive no compensation.

Two or more towns may, by a vote of each,

form a district for the purpose of employing a superintendent of public schools therein, who shall perform in each town the duties prescribed by law. Such superintendent shall be annually appointed by a joint committee, composed of the chairman and secretary of the school committee of each of the towns in said district, who shall determine the relative amount of service to be performed by him in each town, and shall fix his salary and apportion the amount thereof to be paid by the several towns, and certify such amount to the treasurer of each town. Said joint committee shall, for said purposes, be held to be the agents of each town composing said district. Pub. Sts., c. 44, §§ 43-45.

Any two or more towns, the valuation of each of which does not exceed \$2,500,000, and the aggregate number of schools in all of which is not more than fifty nor less than thirty, may, by vote of the several towns, unite for the purpose of the employment of a superintendent of schools under the provisions of this act.

When such a union has been effected, the school committees of the towns comprising the union shall form a joint committee, and for the purposes of this act said joint committee shall be held to be the agents of each town comprising the union. Said committee shall meet annually in joint convention in the month of April, at a day and place agreed upon by the chairman

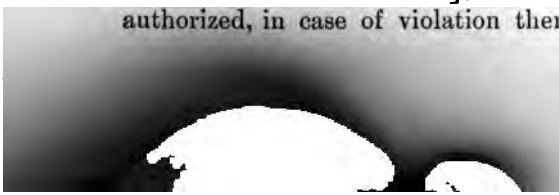


of the committees of the several towns comprising the union, and shall organize by the choice of a chairman and secretary. They shall choose, by ballot, a superintendent of schools; determine the relative amount of service to be performed by him in each town; fix his salary, and apportion the amount thereof to be paid by the several towns, and certify such amount to the treasurer of each town. St. 1888, c. 431, §§ 1, 2. If towns unite in employing a superintendent of schools under the provisions of St. 1888, c. 431, the Commonwealth pays a part of the expense.

Surveyor of Marble, Soapstone, and Freestone. —

The mayor and aldermen or selectmen of a city or town may establish such ordinances or by-laws, with suitable penalties, respecting the appointment of a surveyor, and the survey and measurement of marble, soapstone, and freestone of every description, foreign or American, that is imported or brought into such place for sale, as they may from time to time deem expedient. Pub. Sts. c. 60, § 53.

Truant Officers. — The school committee of each town shall appoint and fix the compensation of two or more suitable persons, to be designated truant officers, who shall, under the direction of said committee, inquire into all cases arising under such by-laws [relating to truant children and absentees from school], and shall alone be authorized, in case of violation thereof, to make



complaint and carry into execution the judgment thereon; and who may serve all legal processes issued by the courts in pursuance of such by-laws or of sections 10 to 16 inclusive, but who shall not be entitled to receive any fees for such service. Pub. Sts., c. 48, § 11. A truant officer appointed under the foregoing statute does not hold over after the expiration of his year, although no other has been appointed in his place. *Huse v. Lowell*, 10 Allen, 149.

Watchmen. — The mayor and aldermen or selectmen of a place wherein no watch is established [by the city or town], may from time to time order a suitable watch to be kept in their place, and may warn all persons liable to watch and ward duty to perform the same. They may direct the number of the watch, the places and hours for keeping the same, and may order in writing any constable or officer to warn such watch, either by himself or by some person therefor by him appointed, and to see that all persons so warned attend and perform their duty. Pub. Sts., c. 34, § 4. The mayor and aldermen, or selectmen, shall appoint a suitable person to be officer of the watch, and shall direct the manner in which watchmen shall be equipped. Pub. Sts., c. 34, § 1.

CHAPTER VI.

WHEN CHECK-LIST MUST BE USED.

The presiding officers at meetings held for the election of town or other officers, or for taking the vote upon proposed amendments to the constitution, upon questions submitted to all the voters of the Commonwealth or of any city, and upon the license question, shall be provided with a complete list of the persons qualified to vote at such meeting; and no person shall vote at an election, or in taking any such vote, whose name has not been previously placed on such list, nor until the presiding officers find and check his name thereon, unless such person present a certificate from the registrars of voters as provided by law. St. 1890, c. 423, § 90.

The check-list must be used in the election of all officers whose election is required by law to be by ballot; in voting upon the questions of licensing the sale of intoxicating liquor, Pub.

WHEN CHECK-LIST MUST BE USED. 67

Sts., c. 100, § 5 ; of subscribing for stock in a railroad corporation, *Ibid.*, c. 112, § 46 ; of supplying water to its inhabitants, *Ibid.*, c. 27, § 27 ; and of accepting St. 1882, c. 154, relating to public parks.

CHAPTER VII.

TOWN OFFICERS.

THE following officers must be chosen by ballot :

Assessors	Pub. Sts., c. 27, § 80
Auditors	St. 1889, c. 191
Board of Health	Pub. Sts., c. 80, § 3
Clerk	“ “ c. 27, § 80
Collector of Taxes	Pub. Sts., c. 27, §§ 80, 123 ; St. 1888, c. 390, § 93
Commissioners of Sinking Fund	Pub. Sts., c. 29, § 10
Constables	“ “ c. 27, § 80
Health Officer	“ “ c. 80, § 3
Moderators of meetings held for the choice of town officers	Pub. Sts., c. 27, § 80
Overseers of the Poor if chosen for three years Pub. Sts. c. 27, § 69 ; St. 1883, c. 203, § 2	
Road Commissioners	Pub. Sts., c. 27, § 74
Selectmen	“ “ c. 27, § 80
School Committee	“ “ c. 44, § 21
Treasurer	“ “ c. 27, § 80
Trustees of Public Library	St. 1888, c. 304, § 2

The following officers must be elected by the people, and may be chosen in such mode as the

meeting determines, except in cases otherwise provided by a by-law of the town. Pub. Sts., c. 27, §§ 15, 80.

Assistant Assessors Pub. Sts., c. 27, § 80

Cullers of Staves and Hoops c. 60, § 41

Directors of Workhouse and Almshouse

Pub. Sts., c. 33, § 3

Fence Viewers " " c. 27, § 80

Field Drivers " " c. 27, § 80

Inspectors of Lime " " c. 60, § 46

Keeper of Pound " " c. 36, § 22

Measurers of Wood and Bark¹ c. 60, § 72

Moderator, unless town officers are to be chosen

Pub. Sts., c. 27, § 80

Overseers of Poor, unless chosen for three years

Pub. Sts., c. 27, §§ 69, 80

Park Commissioners St. 1882, c. 154, § 1

Registrars of Births, Marriages, and Deaths in

towns having more than ten thousand inhabi-

itants Pub. Sts., c. 32, § 16

Superintendent of Public Baths and Wash Houses

Pub. Sts., c. 27, § 14

Surveyor of Highways " " c. 27, § 80

" " Lumber " " c. 63, § 6

The following elective officers must be sworn :

Assessors St. 1885, c. 355, § 1

Assistant Assessors " " c. 355, § 1

Auditors St. 1888, c. 221, § 1

¹ Towns may, by vote fixing the number to be chosen, delegate the appointment of such measurers to the selectmen.

Clerk	Pub. Sts., c. 27, § 79
Constables	" " c. 27, § 79
Collectors of Taxes	" " c. 27, § 79
Cullers of Staves and Hoops	" " c. 60, § 41
Fence Viewers	" " c. 27, § 79
Field Drivers	" " c. 27, § 79
Inspector of Lime	" " c. 60, § 46
Measurers of Wood and Bark	" " c. 60, § 72
Overseers of the Poor	Pub. Sts., c. 27, §§ 69, 79
Road Commissioners	Pub. Sts., c. 27, § 76
Registrars of Births, Marriages and Deaths	Pub. Sts., c. 32, § 16
Selectmen	" " c. 27, § 79
Surveyors of Lumber	" " c. 63, § 6
" " Highways	" " c. 27, § 79
Treasurer	" " c. 27, § 79

The following officers either may or must be appointed by the selectmen:—

Clerk, to fill vacancy	Pub. Sts., c. 27, § 98
Collector of taxes, to fill vacancy	St. 1888, c. 390, § 89
Constables, to fill vacancy	Pub. Sts., c. 27, § 86
Engineers	Pub. Sts., c. 35, § 29; St. 1886, c. 113
Enginemmen	" " c. 35, § 12
Fence Viewers, to fill vacancy	Pub. Sts., c. 27, § 86
Field Driver, to fill vacancy	" " c. 27, § 86
Firewards	" " c. 35, § 1
Fish Wardens	" " c. 91, § 42
Forest Firewards	St. 1886, c. 296, § 2
Gauger of Liquid Measures	Pub. Sts., c. 65, § 8
Harbor Masters	" " c. 69, § 25

Harbor Master, Assistant	St. 1882, c. 216
Hose-men	Pub. Sts., c. 35, § 20
Inspectors of Hay and Straw	" " c. 60, § 35
" " Milk	" " c. 57, § 1
" " Oil	" " c. 59, § 6
" " Provisions and Animals for Slaughter	Pub. Sts., c. 58, § 1
" " Vinegar	" " c. 60, § 71
Keeper of Lock-up	" " c. 27, § 33
Measurers of Grain	" " c. 60, § 23
" " Upper Leather	" " c. 62, § 1
" " Wood and Bark ¹	" " c. 60, § 72
Police Officers	" " c. 27, § 85
Probation Officer	" " c. 212, § 74
Railroad Police	" " c. 103, § 13
Registrars of Voters	St. 1890, c. 423, § 18
Sealers of Weights and Measures	Pub. Sts. c. 65, § 8
" " Linear Measures	Pub. Sts., c. 64, §§ 6, 7
Steamboat Police	" " c. 103, § 13
Superintendent of Hay Scales	" " c. 60, § 32
" " Neglected Children	Pub. Sts., c. 48, § 19
" " Streets	St. 1889, c. 98, §§ 1-4
Surveyors of Highways, to fill vacancy	Pub. Sts., c. 27, § 86
" " Marble, Soapstone, and Freestone	Pub. Sts., c. 60, § 53
Treasurer, to fill vacancy	" " c. 27, § 90
Watchmen	" " c. 34, § 4
Weighers of Beef	" " c. 60, § 1

¹ Towns may, by vote fixing the number to be chosen, delegate the appointment of such measurers to the selectmen.

Weighers of Boilers and Heavy Machinery

		Pub. Sts., c. 65, § 30
"	" Coal	" " c. 60, § 80
"	" Fish	St. 1888, c. 163
"	" Vessels	Pub. Sts., c. 69, § 13

The following appointed officers must be sworn :

Inspectors of Milk	Pub. Sts., c. 57, § 1
" " Oil	" " c. 59, § 6
" " Pressed or Bundled Hay and Straw	Pub. Sts., c. 60, § 35
" " Provisions and of Animals Intended for Slaughter	Pub. Sts., c. 58, § 1
" " Vinegar	" " c. 60, § 71
Keeper of Lock-up	" " c. 27, § 33
Measurers of Upper Leather .	" " c. 62, § 1
" " Wood and Bark	" " c. 60, § 72
Railroad Police	St. 1883, c. 65
Registrars of Voters ¹ . . .	St. 1884, c. 298, § 15
" " " temporary ¹ . . .	St. 1885, c. 246
Steamboat Police	St. 1883, c. 65
Superintendent of Streets . .	St. 1889, c. 98, § 5
Weighers of Beef	Pub. Sts., c. 60, § 1
" " Boilers and Heavy Machinery	Pub. Sts., c. 65, § 30
" " Coal	" " c. 60, § 80
" " Fish	St. 1888, c. 163
" " Vessels	Pub. Sts., c. 69, § 13

¹ Registrars of voters and temporary registrars of voters
 "shall before entering upon the duties of their office, take
 and *subscribe* an oath faithfully to perform the same." St. 1890,
 c. 423, § 22.

Whenever a person elected to an office is required to be sworn before entering upon the duties of the office, a person appointed to a vacancy in such office should also be sworn.

FORM OF OATH.

Every assessor, assistant assessor, or other person chosen to assess taxes, or determine or assist in determining the value of property for the purpose of taxation, shall, before entering upon the duties of his office, take an oath which shall be in substance as follows:—I, having been chosen to assess taxes and estimate the value of property for the purpose of taxation for the town [or city] of _____, for the year [or years] ensuing, do swear that I will truly and impartially, according to my best skill and judgment, assess and apportion all such taxes as I may during that time assess, that I will neither overvalue nor undervalue any property subject to taxation, and that I will faithfully discharge all the duties of said office. St. 1885, c. 355, § 1.

The following is a proper form of oath to be administered to all other officers required to be sworn:—

Having been elected [or appointed] _____ of the town of _____, for the year [or years] ensuing, you do swear that you will faithfully perform all the duties of that office. So help you God.

If a person is conscientiously scrupulous of taking an oath he may be permitted to affirm.

For all officers except assessors, and others named in St. 1885, c. 355, the following is a proper form of affirmation:—

Having been elected [or appointed]
of the town of _____, for the year [or
years] ensuing, you do affirm that you will faithfully perform all the duties of that office. This
you do under the pains and penalties of perjury.

TENURE OF OFFICE.

Most of the elective town officers hold their respective offices for one year and until the election and qualification of their successors. *Overseers of Poor v. Sears*, 22 Pick. 130; *School District v. Atherton*, 12 Met. 105; *Dow v. Bullock*, 13 Gray, 136. Members of the school committee, road commissioners, commissioners of the sinking funds, and trustees of the free public library, are chosen for three years. Towns may, when they have adopted certain statutes, choose selectmen, assessors, and overseers of the poor, for terms longer than one year. See pages 30–32.

Most of the appointed officers are appointed to hold office for only one year. Probation officers, railroad and steamboat police officers are appointed to hold office until removed. Harbor-masters are appointed to hold until their successors are appointed; assistant harbor-masters,

until their successors are appointed or their appointments are revoked. Enginemen, gaugers of liquid measures, and police officers are appointed to hold office during the pleasure of the board appointing them, and cannot be appointed for a term to extend beyond the next annual meeting. *Commonwealth v. Higgins*, 4 Gray, 34. Keeper of the lock-up is appointed for one year unless the appointment is sooner revoked. Sealers of weights and measures, superintendent of hay scales, weighers of boilers and heavy machinery, and weighers of coal may be removed at any time.

VACANCIES IN OFFICE. — HOW CAUSED.

A person removing from the town in which he holds a town office shall thereby vacate such office. Pub. Sts., c. 27, § 89; *Barre v. Greenwich*, 1 Pick. 129.

If a person holding an elective town office resign that office and his resignation is accepted by the town or by such officers as are authorized to fill the vacancy, he ceases to hold such office and be such officer as soon as his successor is chosen and qualified, but not before. Pub. Sts., c. 27, § 78; Dill. Mun. Corp., § 224; *Badger et al. v. United States*, 93 U. S. 599.

If a person holding an office by appointment of the selectmen or other board of officers, resign, the resignation takes effect as soon as it is re-

ceived by the appointing board. *Gilbert v. Luce*, 11 Barb. (N. Y.) 91; *Olmsted v. Dennis*, 77 N. Y. 379; Dill. Mun. Corp., § 224, note 2.

By the common law, when two offices or public trusts are incompatible with each other, a person holding one is not disqualified to be appointed or elected to the other, but his acceptance of the second office is, in law, an implied resignation of the first, whenever it may be resigned by the mere act of the incumbent, without the assent or concurrence of a superior authority. *Commonwealth v. Hawkes*, 123 Mass. 525; Pub. Sts., c. 29, § 10; Dill. Mun. Corp., § 226.

If one holding an elective town office is, by the voters of that town, elected to an incompatible office, such action on the part of the voters is a consent that the first office may be vacated; and if the second office be accepted, the first is at once and *ipso facto* determined. But, until acceptance, the former office is not vacated. Dill. Mun. Corp., § 226. If one holds, by election of the voters, an office which he is bound to accept, and for that reason cannot resign of his own will, he is not eligible to an incompatible office which may be filled by appointment by the selectmen or other appointing board.

The foregoing propositions may be illustrated as follows: No person holding the office of auditor, park commissioner, or registrar of voters, in towns having three hundred or more voters,

can hold any other town office. Auditors and park commissioners are elected by the town; registrars of voters in towns having three hundred or more voters are appointed by the selectmen. If the town should choose as auditor one of the assessors, this election would be a consent by the town that the person so chosen auditor might resign the office of assessor, and the moment he accepted the office of auditor he would vacate the office of assessor. Such assessor would be ineligible to the office of registrar of voters, for he cannot, without the consent of the town, resign the office of assessor, and he cannot at the same time hold the office of registrar of voters and the office of assessor. The office of park commissioner, being one that a person is not required to accept, may be resigned at will. A person holding that office may be appointed registrar of voters, and upon acceptance of the latter will vacate the former office.

When an officer is appointed during the pleasure of the appointing board, or when the power of removal is discretionary, the power to remove may be exercised without notice or hearing. Dill. Mun. Corp., § 250.

Commissioners of Sinking Fund. — See page 37.

Collector of Taxes. — If a collector of taxes become insane, or in the judgment of the selectmen otherwise unable to discharge his duty, or absconds, removes, or in the judgment of the

selectmen is about to remove from the place, or if he refuses on demand to exhibit to the mayor and aldermen, or selectmen, his accounts of collections, as provided by St. 1888, c. 390, the selectmen may remove him from office and appoint another collector as in case of the death of the collector. St. 1888, c. 390, § 89. If the collector fails to give the bond required by section 124 of chapter 27 of the Public Statutes, the selectmen may appoint another collector, in the manner and subject to the provisions set forth in section 90 of chapter 27 of the Public Statutes. Pub. Sts., c. 27, § 91.

Engineers of Fire Department may for cause and after hearing be removed by selectmen. St. 1886, c. 113.

Park Commissioners "may be removed by a vote of two-thirds of the legal voters" of the town, at a legal town meeting called for the purpose. St. 1882, c. 154, § 1.

Registrars of Voters. — Whenever, upon written complaint to the mayor of any city, or selectmen of any town, it shall, after notice and hearing, have been determined that the city or town clerk and the two registrars of voters whose terms of office do not expire that year represent the same political party, the said mayor or selectmen shall remove from office the registrar other than said clerk whose term would expire in the succeeding year.

Whenever, upon written complaint to the mayor of any city or selectmen of any town, it shall, after notice and hearing, have been determined that a registrar of voters other than the city or town clerk, has ceased to act with the political party which he was appointed to represent, the said mayor or selectmen shall remove him from office. St. 1890, c. 423, § 21.¹

AMOVAl FROM OFFICE.

In addition to the foregoing provisions of statute, the power to amove a town officer from his office, for reasonable and just cause, is one of the common-law incidents of towns. "We think," says Lord Mansfield in *Rex v. Richardson*, 1 Burr. 539; "that from the reason of the thing, from the nature of corporations, and for the sake of order and government, this power [amotion] is incident as much as the power of making by-laws."

There are three sorts of offences for which an officer may be removed. 1. Such as have no immediate relation to his office, but are themselves of so infamous a nature as to render the offender unfit to execute any public franchise. 2. Such as are only against his oath and the

¹ For a discussion of the doctrine of making party affiliation a qualification for office, see *Commonwealth v. Plaisted*, 148 Mass. 375; *People v. Hurlburt*, 24 Mich. 44; *Attorney-General v. Detroit Common Council*, 58 Mich. 213; *Evansville v. State*, 21 N. Eastern Rep. 267.

duty of his office, and amount to breaches of the tacit condition annexed to his office. 3. Such as are of a mixed nature,—as an offence not only against the duty of his office, but also indictable at the common law. Removals can be made for offences of the first class only *after* a conviction in a court of law; for offences of the second class after the charges are established upon a trial in a town meeting; for offences of the third class, courts have differed on the point whether the officer may or may not be removed before a conviction in a court of law. Dill. Mun. Corp. §§ 240–251. But see *Putnam v. Langley*, 133 Mass. 204; *Deane v. Randolph*, 132 Mass. 475; *Walcott v. Swampscott*, 1 Allen, 102.

VACANCIES IN OFFICE.—HOW FILLED.

When a vacancy occurs in a town office by reason of the non-acceptance, death, removal, insanity, or other disability of a person chosen thereto, or by reason of a failure to elect, the town may fill such vacancy by a new choice at any legal meeting, unless such vacancy has been duly filled by the selectmen. Pub. Sts., c. 27, § 93. A town may fill such vacancy at an adjournment of the annual meeting. *Attorney-General v. Simonds*, 111 Mass. 256.

Auditor.—When, by reason of death, resignation or otherwise, the office of auditor in towns becomes vacant, the remaining auditor or auditors

may perform all the duties of the office or may appoint some person to aid in the performance thereof. When there is no remaining auditor the board of selectmen shall appoint some legally qualified person to fill the vacancy. St. 1890, c. 254.

Board of Health. — If a person elected a member of a board of health in any town, respecting which no provision is made by special law for choosing a board of health, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if a member of a board of health in such town declines further service, or from change of residence or otherwise becomes unable to attend to the duties of the board, the remaining members shall, in writing, give notice of the fact to the selectmen of such town, and the two boards shall thereupon, after giving public notice of at least one week, jointly proceed to fill such vacancy. St. 1885, c. 307, § 1.

Clerk. — When at a town meeting there is a vacancy in the office of town-clerk, or when he is not present, the selectmen shall call upon the qualified voters present to elect a clerk *pro tempore* in like manner as town-clerks are chosen. The selectmen shall sort and count the votes and declare the election of such clerk, who shall be sworn to discharge the duties of said office

at such meeting, and be subject to like penalties for not discharging them as town-clerks are for neglect of the like duties.

When other duties than those mentioned in the preceding section are required to be performed by the town-clerk, and there is a vacancy in such office, or such clerk is prevented from performing such duties, the selectmen may, in writing under their hands, appoint a clerk for the performance thereof, who shall be sworn, and shall immediately after entering upon the duties of his office make a record of such election or appointment. Pub. Sta., c. 27, §§ 97, 98.

Collector of Taxes. — See page 77; also Treasurer.

Commissioners of Sinking Fund. — See page 37.

Constable. — See page 58.

Engineers. — See page 56.

Fence Viewer. — See page 58.

Field Driver. — See page 58.

Highway Surveyor. — See page 58.

Road Commissioners. — See page 35.

School Committee. — If a person elected a member of the school committee, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if a member of the committee declines further service, or, from change of residence or otherwise, becomes unable to attend to the duties of the committee, the remaining members shall, in writing, give no-

tice of the fact to the selectmen of the town, or to the mayor and aldermen of the city, and the two boards shall thereupon, after giving public notice of at least one week, proceed to fill such vacancy; and a majority of the ballots of persons entitled to vote shall be necessary to an election. Pub. Sts., c. 44, § 22.

If all the persons elected members of the school committee, after such notice of their election, refuse or neglect to accept the office, or having accepted, afterwards decline further service, or become unable to attend to the duties of the committee, the selectmen or the mayor and aldermen shall, after giving like public notice, elect by ballot a new committee, and the votes of a majority of the entire board of selectmen, or of the mayor and aldermen, shall be necessary to an election. Pub. Sts., c. 44, § 23.

The term of service of every member elected in pursuance of the provisions of the two preceding sections shall end with the municipal or official year in which he is chosen; and if the vacancy which he was elected to fill was for a longer period, it shall, at the first annual election after the occurrence of the vacancy, be filled in the manner prescribed for original elections of the school committee. Pub. Sts., c. 44, § 24.


Selectmen. — If a town at its annual meeting fails to elect a full board of selectmen, or if any of the persons chosen refuse to act or omit to be qualified according to law, the selectmen

or selectman chosen and qualified may sign warrants for town meetings until a full board is elected. Pub. Sts., c. 27, § 83.

Treasurer. — When the office of treasurer or collector of taxes is vacant, or when the treasurer or collector is prevented from performing the duties of his office, the selectmen may, by writing under their hands, appoint a treasurer or collector *pro tempore*, who shall be sworn and give bonds in like manner as treasurers and collectors chosen by towns, and shall hold his office until another is chosen. Pub. Sts., c. 27, § 90.

If a treasurer fails for ten days after his election to give bond as required by law, the selectmen may declare his office vacant. Pub. Sts. c. 27, § 92.

Trustees of Public Library. — If any person elected a member of the board of trustees, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if any member declines further service, or from change of residence or otherwise, becomes unable to attend to the duties of the board, the remaining members shall, in writing, give notice of the fact to the selectmen of the town, and the two boards may thereupon, after giving public notice of at least one week, proceed to fill such vacancy until the next annual town meeting; and a majority of the ballots of persons entitled to vote shall be necessary to an election. St. 1888, c. 304, § 3.



CHAPTER VIII.

VOTING BY BALLOT.

THE moderator of a town meeting shall receive the votes of all persons whose names are borne on the list of voters as certified by the registrars of voters, and the votes of such persons as shall present to him proper certificates from the registrars of voters of their right to vote; and shall not be answerable for refusing the votes of all other persons. St. 1890, c. 423, §§ 90, 223.

No vote shall be received by the presiding officer unless presented by the voter in person, either in a sealed envelope, or open and unfolded, and so that such officer can know that only one ballot is presented; and no person shall vote at an election whose name is not on the list of voters as certified, unless he presents to the presiding officer a certificate from the registrars of voters of his right to vote, nor until the presiding officer finds and checks his name thereon, or takes up his certificate; provided, that in the election of town officers, whose election is not required by statute to be by ballot,

the check-list shall be used or not as the town at its meeting shall determine; except that the check-list shall be used in the election of moderators of town meetings held for the choice of town officers. St. 1890, c. 423, § 91.

No vote shall be counted which does not clearly indicate in writing the office for which the person voted for is designed, except when but one officer is voted for.

The provisions of statute that the polls shall not be open after sunset, and that the polls shall be open a certain length of time, do not apply to the election of town officers, and such officers may be elected after sunset. There is no provision of statute providing whether one or more officers, except moderator and clerk *pro tem.*, shall be voted for at the same time. These matters are left with the voters to regulate and order as they see fit. To a certain extent it is left with the voters to determine what officers and how many shall be chosen, and what shall be their duties. Before any ballot should proceed for the election of officers whose number is not fixed by statute, it is necessary to determine by vote the number to be chosen. These preliminary questions must necessarily be decided by those voters who are present when the meeting is organized and ready to proceed with the business. Those voters who subsequently arrive must conform to every lawful vote thus taken

as to the order or manner of the election, or the officers or number of them to be chosen. *Conlin v. Aldrich*, 98 Mass. 557; *People's Mutual Insurance Company v. Westcott*, 14 Gray, 440; *Commonwealth v. Wentworth*, 145 Mass. 50.

Every ballot should be complete in itself, and ought not to require extrinsic evidence to enable the election officer to determine the voter's intention. Perfect certainty is not required. It is sufficient if an examination leaves no reasonable doubt upon the intention, and technical accuracy is never required. The cardinal rule is to give effect to the intention of the voter, whenever it is not left in uncertainty; but if an ambiguity appears upon the face, the voter cannot be permitted to testify for whom or for what office he intended to vote. *Cool. Con. Lim.*, *606; *Cush. Parl. Law*, § 105.

The ballot in no case should contain more names than the number of officers to be elected at that time; and, if it should, it must be rejected, for the reason that the canvassing officer cannot choose from among the names on the ballot, and apply the ballot to some to the exclusion of others. The choice must be made by the voter himself, and be expressed by the ballot. Such a ballot must not be rejected as to candidates for other offices regularly named upon the ballot; it is void only as to the particular office for which the multiple ballot was

cast. Cool. Con. Lim., *607; Dill. Mun Corp., § 198; Cush. Parl. Law, § 104.

The name on the ballot should be clearly expressed, and ought to be given in full. Errors in spelling, however, will not defeat the ballot, if the sound is the same; nor abbreviations, if such are in common use and generally understood, so that there can be no reasonable doubt of the intent. And it would seem that when a ballot is cast which contains only the initials of the Christian name of the candidate, it ought to be sufficient, as it designates the person voted for with the same certainty which is commonly met with in contracts and other private writings, and the intention of the voter cannot reasonably be open to any doubt. As the law knows only one Christian name, the giving of an initial to a middle name when the party has none, or the giving of a wrong initial, will not render the ballot nugatory; nor will a failure to give the addition to a name — such as Junior — render it void, as that is mere matter of description, not constituting a part of the name, and if given erroneously may be treated as surplusage. But when the name upon the ballot is altogether different from that of a candidate, and not the same in sound and not a mere abbreviation, the evidence of the voter cannot be received to show for whom it was intended. Cool. Con. Lim., *608; Cush. Parl. Law. §§ 110-113.

The ballot should also sufficiently show on its face for what office the person named upon it is designated. If two officers are to be elected—one for a longer term than the other—the ballot should not only give the names of the persons, but should also designate which is intended for the longer and which for the shorter term. Technical accuracy is not required in these particulars, and the ballot is sufficient if no reasonable doubt can exist as to what is meant. A great constitutional privilege, the highest under the government, is not to be taken away on a mere technicality, but the most liberal interpretation should be made in support of the elector's action whenever the application of the common-sense rules which are applied in other cases will enable us to understand and render it effectual. Cool. Con. Lim., *612.

The elector is not under obligation to vote for every office to be filled at that election; nor when several persons are to be chosen to the same office is he required to vote for as many as are to be elected. He may vote for one or any greater number, not to exceed the whole number to be chosen. Cool. Con. Lim., *613.

The right of suffrage is a right on the part of the electors to elect some one to an office, and not a right to prevent an election being made. The only way to defeat the election of

one candidate is by voting for another. Blank pieces of paper are not counted as ballots. Cush. Parl. Law, § 114.

In all elections of civil officers by the people, the person or persons having the highest number of votes shall be deemed and declared to be elected; but no persons receiving the same number of votes shall be deemed to be elected if thereby a greater number would be elected than required by law. St. 1890, c. 423, § 96.

It is only in the election of officers that a plurality of votes can prevail. In all matters other than the election of officers, a majority, and in some instances two-thirds of the voters present and voting, must vote in favor of a proposition or it is not carried. Borrowing of money, taking land for a park, removing park commissioners, are instances requiring a two-thirds vote.

BALLOTS TO BE PRESERVED.

Moderators of meetings held for the election of town-clerk, selectmen, assessors, treasurer, collector of taxes, or school committee, at which all of said officers are voted for upon one ballot, shall cause the ballots cast for such officers, after the same have been sorted, counted, declared, and recorded, to be secured in an envelope, in open town meeting, and sealed with a seal provided for the purpose, and shall endorse upon

the envelope for what officers the ballots were cast, the date of the election, and a certificate that all the ballots cast by the voters of said town for such officers, and none other, are contained in said envelope. The moderator shall forthwith personally deliver the ballots, sealed as aforesaid, to the town-clerk. St. 1890, c. 423, § 97.


BALLOTS MAY BE RECOUNTED.

If within two days next following the day of an election in a town for town-clerk, selectmen, assessors, treasurer, collector of taxes, or school committee, at which all of said officers are voted for upon one ballot, ten or more qualified voters of such town file with the town-clerk a statement in writing that they have reason to believe that an error was made in ascertaining or declaring the result of any such election, specifying wherein they deem such to have been made, said clerk shall forthwith transmit such statement to the moderator. Such moderator shall thereupon, and within three days next following the day of such election, open the envelope or envelopes containing the ballots cast for candidates for the office the election to which is disputed, and determine the questions raised. If upon such determination it shall appear that some person was elected other than the person declared to have been elected, the moderator

shall forthwith file a certificate of such fact, signed by him, stating therein the number of votes cast for each candidate for the office the election to which is disputed, as determined by the recount, with the town-clerk, who shall record the same in his book of records of town meetings, directly following his record of the meeting at which said election was held, and shall within twenty-four hours after such filing cause a copy of such certificate, attested by him, to be delivered to or left at the residence of the person declared in open town meeting to have been elected, and to the person who, by such certificate, appears to have been elected. The person who, by such certificate, appears to have received the highest number of votes shall be deemed to have been elected.

Moderators may appoint tellers, in the manner provided in Section 222 of chapter 423 of the acts of the year 1890 to assist them in re-counting ballots under the provisions of this act. St. 1890, c. 423, § 226.

The statute contemplates that the statement is to be made by plain people, and technical and narrow rules of construction ought not to be applied to it. It is sufficient if it specifies with reasonable clearness in what respect it is supposed there was error in ascertaining or declaring the result of the election. Opinion of Justices, 136 Mass. 583.



The statute gives no direction as to the disposition of the check-list used at an election of town officers. Such list is an official document; in theory, it is in the custody of the town-clerk, as the keeper of the records, documents, official files, and papers of the town, and should be regarded as an important document, and ought to be certified, or otherwise authenticated and recorded, or filed and preserved for the security, as well of the voters, as of the officers of the town. *Harris v. Whitcomb*, 4 Gray, 433.

CHAPTER IX.

GENERAL MATTERS UPON WHICH TOWN
MAY ACT.

TOWNS exercise local self-government in many things. Certain duties are imposed upon them by law, yet in the discharge of these duties they are permitted to exercise a large discretion. The expenses are paid from a common fund, voted by the inhabitants at a legal meeting, and raised by a tax upon the property of the inhabitants, and such property within the town belonging to non-residents as is taxable.

Towns derive all their authority to tax their inhabitants from the statutes; if the authority to tax for a particular purpose is not found there, either in express terms or by implication, it does not exist. If it is to be found, the action of the town in such case is binding and conclusive; and whether the town acted wisely and with proper discretion is not a subject of investigation or revision by a court.

Towns are confined in their expenditure of money, and the consequent power to tax their inhabitants therefor, to the objects and purposes

named in the statutes, and to other objects and purposes not named, but so connected with and incidental to the objects named, and so directly within the line of their corporate duty and power in the ordinary administrations of their affairs as towns, that they may be fairly presumed, by necessary implication to be included in the words "necessary charges." Such incidental power must spring from some power granted in terms, and relate to a subject-matter set forth with distinctness in some portion of the statutes, and which is in some way necessary for the town to do in carrying out and performing its corporate duties as an existing body politic. Else it has no power to tax its inhabitants, for the principle of a tax is that it is necessary by reason of a public duty in the town to do something in obedience to and imposed by law. *Minot v. West Roxbury*, 112 Mass. 1.

As a town in raising money acts under a delegated power, strictly defined and limited, it is necessary to the validity of its action that it should be within the limits of its legal capacity. A vote to raise money for contingencies only, without qualification or limitation, or any designation of the purpose to which the money is to be appropriated, if it was intended to embrace any considerable portion of the sums raised by a town, would be equivalent to a general vote to raise money. But a town or city has no power

or authority to pass such a vote. Inasmuch as it can grant money only for certain specified and enumerated objects, unless these are in some way designated in the vote authorizing a tax, or otherwise declared and made known at the time of the grant of money, there would be no means of ascertaining whether a town acted within the limits of the authority granted to it by the legislature in voting the money, and no mode of restraining the agents of the town in its appropriation and expenditure. Every voter in a town has a right to know or to have the means of ascertaining the purposes and objects for which money is proposed to be granted ; otherwise he cannot judge of the necessity or propriety of the grant, or intelligently exercise his privilege of voting thereon. Every inhabitant who is liable to assessment ought to have access to sources of information by which he can ascertain whether he is called on to contribute to objects which can properly be made a municipal charge or burden ; otherwise he might be subjected to unlawful exactions without the means of redress. It is obvious, therefore, that the power of raising money by taxation, delegated to towns, ought to be exercised by making specific grants or appropriations, and not by votes expressed in vague and indefinite terms, which give no indication of the purposes for which the money is to be appropriated and expended. *Freeland v. Hastings*, 10 Allen, 570.

Acceptance of Statute. — Some statutes are not in force in a town, until they have been accepted by the town.

When it is optional with a town to be bound or not by an act of the legislature, it cannot assume to be bound by a part of the act, without being at once liable to all the other provisions of the act. *Hampshire v. Franklin*, 16 Mass. 76. Such statutes must be accepted by the town, if accepted at all, with all their provisions and without alteration or qualification. *Walker v. West Boylston*, 128 Mass. 550.

Agents. — Towns may, in their corporate capacity, sue and be sued by the name of the town, and may appoint all necessary agents and attorneys in that behalf. Pub. Sts., c. 27, § 8.

A town may appoint agents to transact any of its business, or to perform any duty, which, by law, it is required to perform, if the statute does not require such business to be transacted or such duty to be performed by some officer.

It is competent for a town, at the commencement of its political year, to appoint an agent to defend all suits that may be instituted against it during the year; or at any legal meeting called for the purpose, to pass a similar vote as to any particular case expected to arise during the year. *Cushing v. Stoughton*, 6 Cush. 389.

The selectmen are not, by virtue of their office,

the legally constituted agents of the town to institute and prosecute suits in favor of the town, or to appear and defend suits against the town. *Walpole v. Gray*, 11 Allen, 149. They are not general agents; they are empowered to do only such acts as are required to meet the exigencies of ordinary town business. *Smith v. Cheshire*, 13 Gray, 318; *Clark v. Russell*, 116 Mass. 455.

The authority of the town treasurer as an agent of the town is limited to the receipt and payment of money, and does not include any power to enter into contracts binding on the town. *Smith v. Cheshire*, 13 Gray, 318.

Where a municipal corporation elects or appoints an officer, in obedience to an act of the legislature, to perform a public service in which the city or town has no particular interest, and from which it derives no special benefit or advantage in its corporate capacity, but which it is bound to see performed in pursuance of a duty imposed by law for the general welfare of the inhabitants or of the community, such officer cannot be regarded as a servant or agent, for whose negligence or want of skill in the performance of his duties a town or city can be held liable. *Hafford v. New Bedford*, 16 Gray, 297. This principle has been held applicable to acts of selectmen. *Leman v. Newton*, 134 Mass. 479; *Cushing v. Bedford*, 125 Mass.

526. Of assessors. *Walker v. Cook*, 129 Mass. 577; *Alger v. Easton*, 119 Mass. 77; *Rossire v. Boston*, 4 Allen, 57. Of highway surveyors. *White v. Phillipston*, 10 Met. 108; *Walcott v. Swampscott*, 1 Allen, 101; *Prince v. Lynn*, 149 Mass. 193. Of collector of taxes. *Perley v. Georgetown*, 7 Gray, 464; *Dunbar v. Boston*, 112 Mass. 75. Of police officers. *Buttrick v. Lowell*, 1 Allen, 172. Of road commissioners. *Clark v. Easton*, 146 Mass. 43. Of field drivers. *Vincent v. Nantucket*, 12 Cush. 103. Of school committee. *McKenna v. Kimball*, 145 Mass. 555. The school committee are for certain purposes the agents of the town. Pub. Sts., c. 44, § 45; St. 1888, c. 431, § 2.

Any town interested in a petition to the legislature may at a legal meeting, by a two-thirds vote of the legal voters present thereat, authorize the employment of counsel to represent such town at any hearing before any committee of the legislature upon such petition; provided, however, that no expenses shall be hereby authorized excepting such as would be incurred in presenting a case before the judicial courts. Such town employing counsel shall require a detailed account of any expenses incurred, and a copy of said account shall be filed with the town-clerk and open to the inspection of all tax-payers of the town. St. 1889, c. 380.

Selectmen, acting under a vote of the town

to build a road ordered by the county commissioners, act as agents of the town. *Deane v. Randolph*, 132 Mass. 475; *Doherty v. Braintree*, 148 Mass. 495. Without the vote of the town, neither the selectmen nor the road commissioners have power to contract for the construction of such way. *Bean v. Hyde Park*, 143 Mass. 245.

Towns are liable for the negligence of its agents in the construction or repair of sewers. *Stock v. Boston*, 149 Mass. 410.

Aid to Soldiers and Sailors. — Any city or town may raise money for the purpose of paying military aid to certain soldiers and sailors and commissioned officers, as provided by St. 1889, c. 279. And any city or town may raise money for the purpose of paying State aid to certain soldiers and sailors and dependent relatives, as provided by St. 1889, c. 301. The provisions of said statutes continue in force until the first day of January in the year 1895.

Any city or town may appropriate any sum of money for necessary aid to soldiers and sailors and their families, and to the families of the slain, and may by special vote entrust such sum or any part thereof to any post of the Grand Army of the Republic located in such city or town, to be disbursed under its directions to any such persons residing in such city or town: *provided*, that the treasurer or other financial

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officer of such post shall make an annual return to such city or town under oath, containing an itemized and specific statement of the disposition of such sums made by such post during the preceding year, and shall exhibit his vouchers for such disbursements to any committee of such city or town for examination.

The officer designated in section 1 to hold and disburse said money shall, before receiving the same, give a bond for the faithful discharge of his trust to the city or town paying over the same, in such sum and with such sureties as the mayor and aldermen or the selectmen may require. St. 1885, c. 189.

Almshouse. — See Poor.

Armories or Headquarters of Militia. — Cities and towns in which regiments, battalions, corps of cadets or companies, or the headquarters of brigades, regiments, battalions, corps of cadets, signal and ambulance corps, or detachments of militia, are located, may raise money, by taxation or otherwise, for the purpose of erecting suitable buildings for the armories or headquarters of such organizations. St. 1887, c. 411, § 92.

Baths and Wash-Houses. — A town in which chapter 214 of the statutes of the year 1874 has been duly accepted, or in which this and the following section have been accepted by two-thirds of the legal voters present and voting at an annual meeting, may purchase or lease



lands, and erect, alter, enlarge, repair, and improve buildings for public baths and wash-houses, either with or without open drying grounds, and may make open bathing places, and may fit up and furnish all of the same with the requisite furniture, fittings, and conveniences, and may raise and appropriate money therefor.

Such town may establish rates for the use of such baths and wash-houses, and appoint officers therefor, and may make by-laws for the government of such officers, and authorize them to make such rules and regulations as may seem to them expedient for the management of such baths and wash-houses; but such by-laws, rules, or regulations, shall be subject to alteration or repeal at any time. Pub. Sts., c. 27, §§ 13, 14.


Burial-Grounds. — Each town and city shall provide one or more suitable places for the interment of persons dying within its limits: Pub. Sts., c. 82, § 9; and may grant and vote money therefor. Pub. Sts., c. 27, § 10.

When there is a necessity for a new burial-ground in a town, or for the enlargement of a burial-ground already existing in and belonging to a town, and the owner or any person interested in the land needed for either purpose refuses to sell the same, or demands therefor a price deemed unreasonable by the selectmen of the town, or is unable for any reason to convey the land, the selectmen may, with the appro-

bation of the town, make application therefor by written petition to the commissioners of the county wherein the land is situated. Pub. Sts., c. 82, § 10.

Towns may grant and vote such sums as they may judge necessary for enclosing any cemetery provided by them according to law, or constructing paths and avenues and embellishing the grounds in the same, and may establish all necessary rules in relation thereto not repugnant to law. They may lay out such cemetery into lots, and shall set apart a suitable portion as a public burial-place for the use of the inhabitants, free of charge. They may sell and convey to any persons, whether residents of the town or otherwise, the exclusive right of burial and of erecting tombs and cenotaphs upon any lot, and of ornamenting the same, upon such terms, conditions, and regulations as they shall prescribe; and the proceeds of such sales shall be paid into the town treasuries, and be kept separate and apart from other funds, and be appropriated to reimburse the towns for the cost of the land, or of the improvement and embellishment thereof. Pub. Sts., c. 82, § 15.

No city or town shall alienate, convey, or appropriate to any other use than that of a burial-ground, any tract of land which has been for more than one hundred years used as a place of burial of the dead; and no portion of such



burial-ground shall be taken for any public use without special authority from the legislature ; but this section shall not apply in any case where the town has given its consent to such use, or where special authority therefor had been granted by the legislature, prior to the 28th day of April in the year 1880. Pub. Sts., c. 82, § 16.

Any person holding, occupying, or interested in a lot in a public burial-place of a city or town may deposit with the treasurer of such city or town a sum of money not exceeding five hundred dollars for the purpose of providing for the preservation and care of such lot or its appurtenances ; which sum shall be entered upon the books of the treasurer, and held in accordance with the provisions of the ordinances or by-laws of such city or town in relation to burials. A city or town may pass such ordinances or by-laws as may be necessary for the purposes of this section, and not repugnant to law ; and may receive such money for said purposes, and may allow interest thereon at a rate not exceeding six per cent a year. Pub. Sts., c. 82, § 17.

Any city or town is hereby authorized to receive, hold, and apply any funds, moneys, or securities which may be deposited with the treasurer of such city or town for the preservation, care, improvement, or embellishing of any public or private burial-place situated therein, or

of burial lots located in the same. St. 1884, c. 186, § 1.

Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, shall be used for the purpose of burial, unless by permission of the town or of the mayor and aldermen of the city in which the same is situated. Pub. Sts., c. 82, § 18.

By-Laws. — Towns may make for the following named purposes, in addition to other purposes authorized by law, such necessary orders and by-laws, not repugnant to law, as they may judge most conducive to their welfare, and may affix penalties, not exceeding twenty dollars for one offence, for breaches thereof: —

For directing and managing the prudential affairs, preserving the peace and good order, and maintaining the internal police thereof.

For preventing the falling and securing the removal of snow and ice from the roofs of buildings in such portions of their limits, and to such extent, as they may deem expedient; the penalty for violation of such by-laws to apply to the owner of such building, or to his agent having the care thereof.

For requiring owners of buildings near the line of streets and public ways to erect barriers, or to take other suitable measures to prevent

the falling of snow and ice from such buildings upon persons travelling on such streets and ways, and to protect such persons from any other dangers incident to the maintenance, occupation, or use of such buildings. Pub. Sts., c. 27, § 15.

A town, in which water is supplied at the public expense, may, by by-laws, prescribe rules and regulations for the inspection, materials, construction, alteration, or use of all pipes and of fixtures through which such water is used within said town, and may impose penalties not exceeding twenty dollars for each violation thereof; and may prohibit the use of such water by persons neglecting or refusing to comply with the provisions of such by-laws; and any such by-law may be made operative within the whole territory of such town, or within any prescribed or defined district or districts of said territory. Pub. Sts., c. 27, § 16.

The powers conferred by the preceding section, except the power to impose penalties, may be exercised through any board or commission which the town may designate; but the powers so delegated may at any time be revoked by the authority delegating them. Pub. Sts., c. 27, § 17.

A town may regulate by by-laws, not repugnant to law, with penalties not exceeding fifty dollars for each violation thereof, the use of reservoirs, and land and drive-ways appurtenant

thereto, forming a part of the system of water supply within its limits. Pub. Sts., c. 27, § 18.

With the exception of Boston, each city or town which has adopted chapter 243 of the statutes of the year 1872, or which adopts this section, may, for the prevention of fire and the preservation of life, by ordinances or by-laws not repugnant to law, and applicable throughout the whole or any defined part of its territory, regulate the inspection, materials, construction, alteration, and use of buildings and other structures within its limits, excepting such buildings and structures as are owned or occupied by the United States or the Commonwealth, and excepting also bridges, quays, and wharves, and may prescribe penalties not exceeding one hundred dollars for each violation of such regulations. Pub. Sts., c. 104, § 1.

In a town which has adopted chapter 375 of the statutes of the year 1870, or which adopts this and section 3 of chapter 104 of the Public Statutes, no dwelling-house or other structure more than eight feet in length or breadth and seven feet in height, except detached houses or structures situate more than one hundred feet from any other building and wooden structures erected on wooden wharves, shall be built within such limits as the town may from time to time prescribe, unless made of and covered with some incombustible material, or unless a special license

in writing is granted therefor by a majority of the selectmen for reasons of public good or necessity, and is recorded in the records of the town. Pub. Sts., c. 104, § 2.

The city council of any city and any town may make ordinances and by-laws, not inconsistent with the provisions of statute, or with the rules made by the railroad commissioners as authorized by section 62 of chapter 102 of Public Statutes, for the protection of life and property, in regard to the keeping, storage, use, manufacture, or sale of explosive compounds, and may regulate the transportation thereof through the streets or highways of such city or town, and affix penalties not exceeding fifty dollars for each violation thereof. Pub. Sts.; c. 102, § 60.

Each town may, and every town containing five thousand or more inhabitants shall, make all needful provisions and arrangements concerning children under sixteen years of age, who by reason of the neglect, crime, drunkenness, or other vices of parents, or from orphanage, are suffered to be growing up without salutary parental control and education, or in circumstances exposing them to lead idle and dissolute lives; and may also make all such by-laws respecting such children as shall be deemed most conducive to their welfare and to the good order of the city or town. Pub. Sts., c. 48, § 18.

The city council of any city and any town may make such additional by-laws and regulations concerning the licensing and restraining of dogs, as they deem expedient, and may affix penalties not exceeding ten dollars for a breach thereof; but such by-laws and regulations shall relate only to dogs owned or kept in such city or town; and the annual fee required for a license shall in no case be more than one dollar in addition to the sum required by section 82. Pub. Sts., c. 102, § 109.

Towns may at their annual meetings establish by-laws to provide for the removal of snow and ice, to such extent as they may deem expedient, from sidewalks within the limits of the highways or town-ways therein. Pub. Sts., c. 53, § 8.

Such by-laws shall determine the time and manner of removal, and shall annex penalties, to be recovered in an action of tort in the name of the town, not exceeding ten dollars for each violation thereof, by any owner or tenant of an estate abutting upon such sidewalks. Pub. Sts., c. 53, § 9.

A city or town may make suitable by-laws and regulations to prevent the pasturing of cattle or other animals, either with or without a keeper, upon any or all of the streets or ways in such city or town, and may annex penalties not exceeding twenty dollars for each violation thereof. But no such by-law or regulation shall affect the

right of a person to the use of land within the limits of such way adjoining his own premises. Pub. Sts., c. 53, § 10.

A city or town may regulate by suitable ordinances or by-laws the passage and driving of sheep, swine, and neat cattle through and over the public streets, ways, causeways, and bridges therein, and may annex penalties not exceeding fifty dollars for each violation thereof. Pub. Sts., c. 53, § 11.

A city or town may regulate by ordinance or by-law the transportation of the offal of slaughtered cattle, hogs, sheep, or other animals, over, along, or through any of the public streets or highways therein, and may annex penalties not exceeding one hundred dollars for each violation thereof. Pub. Sts., c. 53, § 12.


A city or town may by ordinance or by-law prohibit persons from riding or driving beasts of burden, carriage, or draught, upon any of the streets or ways for public travel therein, at a rate of speed which it deems inconsistent with the public safety or convenience, under such penalties as it may impose for breaches of other ordinances or by-laws. Pub. Sts., c. 53, § 13.

A town may, at an annual meeting, establish by-laws to prevent persons from riding or driving horses at a rate faster than a walk over any bridge within its limits, and which has cost not less than five hundred dollars, and may annex

penalties not exceeding one dollar for a breach thereof; but such by-laws shall first be approved by the commissioners for the county in which such town lies. Pub. Sts., c. 53, § 19.

The city council of any city and any town may order that no gunpowder shall be kept in any place within the limits thereof, unless it is well secured in tight casks or canisters; that no gunpowder above the quantity of fifty pounds shall be kept or deposited in a shop, store, or other building, or in a ship or vessel, which is within the distance of twenty-five rods from another building or from a wharf; that no gunpowder above the quantity of twenty-five pounds shall be kept or deposited in a shop, store, or other building within ten rods of another building; and that no gunpowder above the quantity of one pound shall be kept or deposited in a shop, store, or other building within ten rods of another building, unless it is well secured in copper, tin, or brass canisters, holding not exceeding five pounds each, and closely covered with copper, brass, or tin covers. Pub. Sts., c. 102, § 56.

The city council of any city and any town may adopt such rules and regulations as they deem reasonable in relation to the storage and sale, within the limits thereof, of camphene or any similar explosive or inflammable fluid, and may affix penalties for breaches thereof, not



exceeding twenty dollars for any one offence. Pub. Sta., c. 102, § 58.

A city or town may provide by ordinance or by-law that every keeper of a shop for the purchase, sale, or barter of junk, old metals, or second-hand articles, within its limits, shall keep a book, in which shall be written, at the time of every purchase of any such article, a description thereof, the name, age, and residence of the person from whom, and the day and hour when, such purchase was made; that such book shall at all times be open to the inspection of the mayor and aldermen or selectmen, and of any person by them respectively authorized to make such inspection; that every keeper of such shop shall put in some suitable and conspicuous place on his shop a sign having his name and occupation legibly inscribed thereon in large letters; that such shop, and all articles of merchandise therein, may be at all times examined by the mayor and aldermen or selectmen, or by any person by them respectively authorized to make such examination; and that no keeper of such shop shall directly or indirectly either purchase or receive by way of barter or exchange any of the articles aforesaid, of a minor or apprentice, knowing or having reason to believe him to be such; and that no article purchased or received shall be sold until a period of at least one week from the date of its purchase

or receipt has elapsed. A city or town may also prescribe in like manner the hours in which such shops shall be closed, and that no keeper thereof shall purchase any of the articles aforesaid during such hours. Pub. Sts., c. 102, § 29.

The city council of any city and any town may adopt such ordinances, by-laws, and regulations, not inconsistent with the provisions of chapter 102 of the Public Statutes, as it may deem reasonable in relation to the manufacture, mixing, storing, keeping, or selling, within the corporate limits of such city or town, oil made from coal or petroleum and naphtha, and may affix penalties for breaches thereof, not exceeding fifty dollars for each offence; reasonable notice of which ordinances, by-laws, or regulations, shall be given. Pub. Sts., c. 102, § 75; St. 1885, c. 122.

Every city by ordinance, and every town by by-law, may direct which power its collector shall exercise to enforce the lien for taxes or assessments laid on real estate, that of sale or of taking; and in the absence of any such ordinance or by-law, the collector may exercise either power at his discretion; but the passage of any such ordinance or by-law shall not render invalid any proceedings commenced before the passage of the same. St. 1888, c. 390, § 77.

Each town shall make all needful provisions



and arrangements concerning habitual truants and children between seven and fifteen years of age who may be found wandering about in the streets or public places therein, having no lawful occupation or business, not attending school, and growing up in ignorance, and such children as persistently violate the reasonable rules and regulations of the common schools; and shall make such by-laws as shall be most conducive to the welfare of such children, and to the good order of such town; and shall provide suitable places for the confinement, discipline, and instruction of such children. Pub. Sts., c. 48, § 10; St. 1889, c. 249.

If three or more towns in any county so require, the county commissioners shall establish at the expense of the county, at a convenient place therein, other than the jail or house of correction, a truant school for the confinement, discipline, and instruction of minor children convicted under the provisions of sections ten and twelve and all acts in amendment thereof and in addition thereto; and shall make suitable provisions for the government and control, and for the appointment of proper teachers and officers thereof. But the county commissioners of two, three, or four contiguous counties may, and if three or more cities or towns in each of such counties require, shall, at the expense of said counties, establish for said counties at a convenient place therein a union truant school, to be

organized and controlled by the chairman of the county commissioners of said counties in the manner provided for the government and control of county truant schools by county commissioners; and any county so uniting with another county or counties in the support of a union truant school shall not be required to support a truant school of its own. St. 1890, c. 309.

A city or town may establish ordinances or by-laws respecting the marking and weighing of lighters and other vessels employed in transporting stones, gravel, sand, or other ballast; the inspection and weighing of such ballast within the city or town; and the appointment and compensation of weighers, markers, inspectors, and other officers necessary to carry such ordinances or by-laws into effect; and may affix penalties for breaches thereof, not exceeding those mentioned in sections 17, 20, and 21. Pub. Sts., c. 69, § 22.

The by-laws of a town must not be repugnant to the laws of the State; and must be reasonable, that is, not interfering with the liberty, property, and business of the citizen more than is requisite to secure the lawful and proper object in view: *Commonwealth v. Patch*, 97 Mass. 221; and must be certain; though a by-law imposing a penalty not exceeding a certain sum has been held not to be void for uncertainty. Cool. Con. Lim., *202.

Before any by-law takes effect it shall be approved by the superior court, or, in vacation,

by a Justice thereof, and shall, with such approval, be entered and recorded in the office of the clerk of the courts in the county where the town is situated, or in the county of Suffolk in the office of the clerk of the superior court for civil business. Pub. Sts., c. 27, § 21.

Celebrating Centennial, or Two Hundred and Fiftieth Anniversary of its Incorporation.—A town may at its annual meeting raise by taxation a sum of money, not exceeding one-tenth of one per cent of its assessed valuation for the year last preceding, for the purpose of celebrating any centennial or two hundred and fiftieth anniversary of its incorporation, and of publishing the proceedings of any such celebrations. Pub. Sts., c. 27, § 11; St. 1889, c. 21, § 1.

The above statute refers to the act which was the beginning of its corporate existence whether as a district or as a town. *Hill v. Easthampton*, 140 Mass. 381. Towns were not formally incorporated until 1785. *Commonwealth v. Roxbury*, 9 Gray, 511.

Compensation of Officers.—Towns may grant compensation for the services of their officers and agents, although many of them are not entitled to pay for the discharge of their ordinary official duties. *Sikes v. Hatfield*, 13 Gray, 347; *Farnsworth v. Melrose*, 122 Mass. 268; *Arlington v. Peirce*, 122 Mass. 270.

Contracts.—Towns possess only a limited right to bind themselves, and the inhabitants and prop-

erty within their respective limits, by civil contracts. They may make contracts which are necessary or convenient in the exercise of their corporate powers. Pub. Sts., c. 27, § 9. For such purposes there is no limitation of the authority. Their contracts will be valid when made in relation to objects concerning which they have a duty to perform, an interest to protect, or a right to defend. But here is the extent at once of their right and their power. They cannot engage in enterprises foreign to the purposes for which they were incorporated, nor assume responsibilities which involve undertakings not within the compass of their corporate powers. *Vincent v. Nantucket*, 12 Cush. 103. In making contracts, towns are not limited to those which must be performed within a year. A town may contract with a water company to supply water to hydrants for fire purposes for an annual compensation for ten years. *Smith v. Dedham*, 144 Mass. 177. See *post*, 130.

Dangerous Buildings. — See Nuisance.

Debts. — Cities and towns shall not incur debts except in the manner of voting, and within the limitations as to amount and time of payment, prescribed by statute. Pub. Sts., c. 29, § 1.

In ascertaining the amount of indebtedness of a city or town for the purposes of this chapter, debts created for supplying the inhabitants with water shall be omitted, and the amount of its sinking-funds shall be deducted. Pub. Sts., c. 29, § 2.

The provisions of the first seventeen sections of chapter 29 of Public Statutes shall not apply to debts lawfully incurred in aid of railroad corporations, or to water-scrip lawfully issued by a town under special statutes, for the indebtedness of a fire district. Pub. Sts., c. 29, § 3.

No city or town, except as provided in the following section, shall become indebted in an amount which exceeds three per cent on the last preceding valuation, for the assessment of taxes, of the taxable property therein. Pub. Sts., c. 29, § 4.

Cities and towns which were indebted on the 13th day of June in the year 1875 to an amount not less than two per cent on the valuation for said year, for the assessment of taxes, of the taxable property therein, may, within the limitations as to the manner of voting the same, and time of payment, prescribed in this chapter, increase such indebtedness to the extent of an additional one per cent on that valuation, and no more. Pub. Sts., c. 29, § 5.

Cities and towns may, by ordinary vote, incur debts for temporary loans in anticipation of the taxes of the municipal year in which such debts are incurred and expressly made payable therefrom by vote of the city or town. Pub. Sts., c. 29, § 6; St. 1885, c. 312, § 4; St. 1889, c. 372, § 1.

Other debts than those mentioned in the preceding section shall be incurred only by a vote

of two-thirds of the voters present and voting at a town meeting, or of two-thirds of all the members of each branch of the city council, taken by yeas and nays, and approved by the mayor; or, if he disapproves such vote, by another like vote taken after notice of such disapproval, which notice shall be given within ten days from the time in which the vote of the city council is laid before the mayor; and if the mayor fails to give such notice to the branch of the city council in which such vote was first taken, he shall be deemed to have approved such vote. Pub. Sts., c. 29, § 7.

All debts mentioned in the preceding section shall be payable within the following periods: namely, debts incurred in supplying the inhabitants with water, within not exceeding thirty years; debts incurred in constructing sewers, within not exceeding twenty years; and all other debts within not exceeding ten years. Pub. Sts., c. 29, § 8. See note on page 169.

The interest on all debts shall be raised by taxation annually. When a debt is payable at a period exceeding ten years, the city or town shall, and when payable at a period not exceeding ten years may, at the time of contracting the same, establish a sinking-fund, and contribute thereto from year to year an amount raised annually by taxation sufficient with its accumulations to extinguish the debt at maturity; and when payable at a period not exceeding ten

years the city or town shall raise by taxation annually not less than eight per cent of the principal thereof, and shall set apart the same for a sinking-fund until an amount is raised sufficient with its accumulations to extinguish the debt at its maturity; and shall raise any balance necessary for such extinguishment, by taxation, in the year before the maturity of the debt. No such sinking fund shall be used for any other purpose than the payment and redemption of such debt. Pub. Sts., c. 29, § 9.

Each city and town which was indebted on the 13th day of June in the year 1875, to an amount exceeding five per cent on the valuation for said year, for the assessment of taxes, of the taxable property therein, shall establish a sinking-fund, and contribute thereto from year to year an amount raised annually by taxation sufficient with its accumulations to extinguish the debt within thirty years from said date; and each city and town which was then indebted to an amount less than five per cent and more than one per cent on such valuation shall establish a sinking-fund, and contribute thereto as above provided, so as to extinguish the debt within twenty years from said date; subject, however, in both cases to the provisions of the following section. Pub. Sts., c. 29, § 12.

In establishing and contributing to the sinking-funds mentioned in the preceding section, it shall be sufficient to provide for the extinguishment,

at their maturity, of funded debts existing on the 13th day of June in the year 1875, and for the extinguishment within thirty years from said date of debts then existing and contracted for supplying the inhabitants with water. Pub. Sts., c. 29, § 13.

Nothing contained in the first seventeen sections shall be construed as prohibiting the inhabitants of towns, or city councils, from paying or providing for the payment of any debts at earlier periods than is herein required; or from renewing the same in securities payable within the period required for the final payment of the debt; or from adding to any sinking-funds the excess of any appropriation over the amount required for the purpose thereof, or any sums derived from taxation or from other sources, which are not required by law to be otherwise expended; and such additions may be made for the purpose of reducing the entire debt for the redemption of which the sinking-fund was established, or of reducing the amount to be raised by taxation for such fund. Pub. Sts., c. 29, § 14.

The restrictions of the preceding sections shall not exempt a city or town from its liability to pay debts contracted for purposes for which it may lawfully expend money. Pub. Sts., c. 29, § 16.

No city or town shall, for the purpose of subscribing in aid of a railroad corporation, increase its indebtedness to an amount which, with its existing net indebtedness incurred for any pur-

pose, exceeds three per cent of the valuation of the taxable property therein, to be ascertained by the last preceding city or town valuation for the assessment of taxes; but the limitation of this section shall not apply to temporary loans in anticipation of the taxes of the year in which such debts are incurred and of the year next ensuing, and expressly made payable from such taxes by vote of the said city or town. Pub. Sts., c. 29, § 19. See section 6.

A city or town owing debts incurred in aid of a railroad corporation may, for the purpose of paying the same, establish a sinking-fund, which shall be subject to the provisions of sections 10 and 11, and may contribute thereto any sums received from sales of the stock or securities of such corporations, or from dividends or interest upon the same, or from taxes voted for the payment of such indebtedness; and may transfer the custody and management of such stock and securities to the commissioners of such sinking-fund. Pub. Sts., c. 29, § 20.

A city or town having a sinking-fund for the payment of its general indebtedness, under the provisions of this chapter, may, by a vote of the inhabitants of such town, or of the city council of such city, provide that the commissioners of such sinking-fund shall be the commissioners of the sinking-fund under the preceding section. Pub. Sts., c. 29, § 21.

A city or town owing debts described in sec-

tion 20 shall annually raise by taxation a sum sufficient, with the income, if any, derived from its stock or securities there mentioned, to pay the interest on such debts. Pub. Sts., c. 29, § 22.

The supreme judicial court may compel cities and towns and their respective officers to comply with the foregoing provisions of law. Pub. Sts., c. 29, §§ 17, 22.

A city or town which recalls and pays any of its securities, under rights reserved therein, may issue, in place of securities so recalled and paid, other securities payable at periods within the maturity of those originally issued. Such new securities shall, for debts created before the 28th day of May in the year 1876, be made payable within thirty years from the 13th day of June in the year 1875; and shall, for debts created after said 28th day of May, be made payable within thirty years from the time of contracting the same. Pub. Sts., c. 29, § 23.

Any city or town required by chapter 29 of the Public Statutes to establish a sinking-fund for the payment of its indebtedness may, instead thereof, by a majority vote provide for the payment of such indebtedness in such annual proportionate payments as will extinguish the same within the time prescribed in said chapter; and when such vote has been heretofore or shall be hereafter passed, the amount required thereby shall, without further vote, be assessed by the assessors in each year thereafter, until the debt

shall be extinguished, in the same manner as other taxes are assessed under the provisions of section 34 of chapter 11 of the Public Statutes. St. 1882, c. 133, § 1.

Any city or town which has already incurred or shall hereafter incur a debt under the provisions of chapter 29 of the Public Statutes may issue notes, bonds, or scrip therefor, properly denominated on the face thereof and signed by its treasurer, and countersigned, in case of a city, by its mayor, and in case of a town by a majority of its board of selectmen, and within the limitations as to amount and time of payment prescribed in said chapter 29, with interest payable semi-annually at a rate not exceeding six per cent per annum; and may sell said notes, bonds, or scrip at public or private sale, or use the same in payment of such debts upon such terms and conditions as it may deem proper, provided that said notes, bonds, and scrip shall not be sold at less than par. St. 1884, c. 129, § 1. See Forests; Railroads.

An action cannot be maintained against a town on a promissory note given since 1885 by its treasurer for borrowed money, unless the vote of the town authorizing the treasurer to borrow money shows either that the debt was in anticipation of the taxes of the year in which the debt was incurred, and expressly made payable therefrom, or that the vote was passed by two-thirds of the legal voters present and voting at a legal meet-

ing. *Agawam Nat. Bank v. So. Hadley*, 128 Mass. 503.

The town treasurer has no right, by virtue of his office, to give a new note of the town in renewal of an old one. *Abbott v. North Andover*, 145 Mass. 484.

Drinking Troughs. — The selectmen may establish and maintain such public drinking troughs, wells, and fountains, within the public highways, squares, and commons of their respective towns, as in their judgment the public necessity and convenience may require; and towns may grant and vote money to defray the expense thereof. Pub. Sts., c. 27, § 50.

Towns, in their corporate capacity, have not been given the right by statute to construct drinking troughs in the public highways. The vote of a town instructing the selectmen in this duty and limiting the expense is irregular and unauthorized. *Cushing v. Bedford*, 125 Mass. 526.

Electric Lights. — See Telegraph.

Felony. — Towns may grant and vote money for procuring the detection and apprehension of persons committing any felony therein. Pub. Sts., c. 27, § 10. See Rewards.

Any crime punishable by death or imprisonment in the State prison is a felony; and no other crime shall be so considered. Pub. Sts., c. 210, § 1.

Forests. — The voters of any town, at a meeting legally called for the purpose, and the city


council of any city, may, for the purpose of devoting a portion of the territory of such town or city to the preservation, reproduction, and culture of forest trees for the sake of the wood and timber thereon, or for the preservation of the water supply of such town or city, take or purchase any land within the limits of such town or city; may make appropriations of money for such taking or purchase; may receive donations of money or land for the said purposes; and may make a public domain of the land so devoted, subject to the regulations hereinafter prescribed. The title of all lands so taken, purchased, or received, shall vest in the Commonwealth, and shall be held in perpetuity for the benefit of the town or city in which such land is situated. St. 1882, c. 255, § 1.

A town or city taking land under this act shall, within sixty days after such taking, file and cause to be recorded in the registry of deeds for the county or district in which the land is situated, a description thereof sufficiently accurate for identifying the same. In case such town or city and the owner of such land do not agree upon the damage occasioned by such taking, such damage shall be ascertained and determined in the manner provided in case of the taking of land for a highway in such town or city, and such town or city shall thereupon pay such sums as may finally be determined to be due. St. 1882, c. 255, § 2.

A city or town in which any such public domain is situated, may erect thereon any building for public instruction or recreation, provided that such use thereof is not, in the judgment of the board of agriculture, inconsistent with the purposes expressed in section one. St. 1882, c. 255, § 5.

No land shall be taken or purchased, no building shall be erected on any such domain, and no expenditures shall be authorized or made, or liability be incurred under this act, by any city or town until an appropriation sufficient to cover the estimated expense thereof shall, in a town, have been made by a vote of two-thirds of the legal voters of such town present and voting in a legal town meeting called for the purpose, or in a city by a vote of two-thirds of each branch of the city council of such city; such expenditures shall in no case exceed the appropriations made therefor, and all contracts made for expenditures beyond the amount of such appropriations shall be void; and all expenditures under this act shall be subject to the laws of this Commonwealth limiting municipal indebtedness. St. 1882, c. 255, § 6.

For the purpose of defraying the expenses incurred under the provisions of this act, any town or the city council of any city may issue from time to time, and to an amount not exceeding the sum actually expended for the taking or purchase of lands for such public domain,



bonds or certificates of debt, to be denominated on the face thereof the "Public Domain Loan," and to bear interest at such rates and to be payable at such times as such town or city council may determine; and for the redemption of such loan, such town or city council shall establish a sinking-fund, sufficient, with the accumulating interest, to provide for the payment of such loan at maturity. All amounts received on account of such public domain shall be paid into such sinking-fund until such fund shall amount to a sum sufficient, with its accumulations, to pay at maturity the bonds for the security of which the fund was established. St. 1882, c. 255, § 7.

Guideposts. — Every town shall, in the manner provided in this chapter, erect and maintain guideposts on the highways and other ways within the town, at such places as are necessary or convenient for the direction of travellers, and shall erect and maintain such guideposts at such forks or intersections of such highways and other ways as lead to adjoining towns or cities. Pub. Sts., c. 53, § 1; St. 1887, c. 162.

The selectmen or road commissioners of each town shall submit to the inhabitants at every annual meeting a report of all the places in which guideposts are erected and maintained within the town, and of all places at which in their opinion they ought to be erected and maintained. For each neglect or refusal to

make such report they shall severally forfeit ten dollars. Pub. Sts., c. 53, § 2.

Upon the report of the selectmen or road commissioners the town shall determine the several places at which guideposts shall be erected and maintained, which shall be recorded in the town records. A town which neglects or refuses to determine such places, and to cause a record thereof to be made, shall forfeit five dollars for every month during which it neglects or refuses so to do; and in such case, upon any trial for not erecting or maintaining guideposts reported to be necessary or convenient by the selectmen or road commissioners, the town shall be estopped from alleging that such guideposts were not necessary or convenient. Pub. Sts., c. 53, § 3.

At each of the places determined by the town there shall be erected a substantial post of not less than eight feet in height, near the upper end of which shall be placed a board or boards, and upon each board shall be plainly and legibly painted, or otherwise marked, the name of the next town or place to which each of such roads leads, and of such other town or place of note as the selectmen or road commissioners may think proper, together with the distance or number of miles to the same; and also the figure of a hand, with the forefinger thereof pointing towards the town or places to which said roads lead; but the inhabitants of a town may, at their an-

nual meeting, agree upon some suitable substitute for such guideposts. Pub. Sts., c. 53, § 4.

Every town which neglects or refuses to erect and maintain such guideposts, or some suitable substitutes therefor, shall forfeit annually five dollars for every guidepost which it so neglects or refuses to maintain. Pub. Sts., c. 53, § 5.

Headstones for Soldiers. — See Memorial Day.

History. — Towns may grant and vote money for procuring the writing and publishing of their town histories. Pub. Sts., c. 27, § 10.

Hospitals. — A city or town not maintaining or managing a hospital is hereby authorized to make a contract with any hospital established therein, or in its vicinity, for the reception, care, and treatment of persons who, by misfortune or poverty, require relief during temporary sickness, and may make the necessary appropriations of money therefor. But nothing herein shall add to the compensation now required from the Commonwealth, or from any city or town, for the care and treatment of any person who shall be chargeable as a pauper to the Commonwealth, or to any city or town, or diminish the right of the Commonwealth to require the removal of a pauper dependent upon it for relief to the State almshouse. St. 1890, c. 119. See Poor.


House Drainage. — Any town may authorize its Board of Health to make and enforce in such town such regulations as said board may deem

necessary for the safety and health of the people with reference to house drainage and its connection with public sewers, when a public sewer abuts the estate to be drained. Whoever violates any such regulation shall forfeit a sum not exceeding one hundred dollars. St. 1889, c. 108.

Impounding Cattle. — When beasts are taken up and distrained by a field driver in a town which has adopted the provisions of chapter 366 of the statutes of the year 1869, or of this section, he may impound them in any suitable place on his own premises; and for the purposes of this chapter he shall be considered a pound keeper, and such place on his own premises shall be considered a town pound in relation to beasts therein impounded. Pub. Sts., c. 36, § 29.

Jury List. — The selectmen of each town shall once in every year prepare a list of such inhabitants of the town, not absolutely exempt, as they think well qualified to serve as jurors, being persons of good moral character, of sound judgment, and free from all legal exceptions; which list shall include not less than one for every one hundred inhabitants of the town, and not more than one for every sixty inhabitants, computing by the then last census, except that in Dukes County it may include one for every thirty inhabitants.

The list, when so prepared, shall be posted up by the selectmen in public places in the town ten days at least before it is submitted



for revision and acceptance, and shall then be laid before the town, and the town may alter it by adding the names of any persons liable to serve, or striking any names therefrom. Pub. Sts., c. 170, §§ 6, 7. The names of the jurymen ought to be given in full.

Library and Reading-Room. — Towns may grant and vote money for maintaining any library therein, to which the inhabitants are allowed free access for the purpose of using the same on the premises, and for establishing and maintaining a public reading-room, in connection with and under the control of the managers of such library. Pub. Sts., c. 27, § 10. Any town or city may establish and maintain a public library therein, with or without branches, for the use of the inhabitants thereof, and may provide suitable rooms therefor, under such regulations for its government as may from time to time be prescribed by the inhabitants of the town or by the city council. Pub. Sts., c. 40, § 9. Any town may, at a legal meeting, grant and vote money for the establishment, maintenance, or increase of a public library therein, and for erecting or providing suitable buildings or rooms therefor; and may receive, hold, and manage any devise, bequest, or donation for the establishment, increase, or maintenance of any such library. Pub. Sts., c. 40, § 10; *Ibid.*, c. 27, § 9.

A town may accept such charitable trust; and

after doing so cannot renounce the same. *Drury v. Natick*, 10 Allen, 169.

Liquors, Sale of. — The aldermen and selectmen respectively shall insert in the warrant for the annual municipal election or town meeting, an article providing for a vote upon the question, "Shall licenses be granted for the sale of intoxicating liquors in this city [or town]?" The vote shall be by separate ballot; and the ballot shall be "Yes" or "No" in answer to said question; and in taking said vote the check-list shall be used. Pub. Sts., c. 100, § 5.

All ballots used in voting upon the question of licensing the sale of intoxicating liquors in towns shall be furnished by the Secretary of the Commonwealth. St. 1890, c. 423, § 83.

In taking the vote in any town upon the question of granting licenses for the sale of intoxicating liquors, there shall be used in such town the ballot-box provided in accordance with the requirements of chapter 423 of the acts of the year 1890; all ballots upon said question shall be deposited in such boxes, and no ballot shall be counted, in ascertaining the result of such vote, unless so deposited and therein registered, or deposited in accordance with the following section. The provisions of said chapter 423 shall, so far as applicable, apply to the use of such ballot-boxes in voting upon said question. St. 1890, c. 423, § 84.

If for any cause it shall become impossible in any town, in taking the vote upon said question, to make use of said ballot-box, the balloting shall proceed as the presiding officer shall direct, and the clerk shall make a record of the facts pertaining to such balloting. St. 1890, c. 423, § 85.

Towns may appropriate money for the enforcement of the liquor law. *Dunn v. Framingham*, 132 Mass. 436.

Lock-up. — Each town containing more than three thousand inhabitants shall, and every town may, keep and maintain a secure and convenient lock-up to which persons arrested by an officer without a warrant may be committed; and a police, district, or municipal court, or a trial justice may commit, for further examination, a prisoner charged with a bailable offence, and not recognizing, to the lock-up in the town in which the court is held, when in the opinion of such court or justice it may be deemed safe and commodious, and costs may be saved thereby. Pub. Sts., c. 27, § 32.

A town which neglects to provide and maintain a lock-up required by law shall forfeit ten dollars for each month of such neglect. And if the selectmen neglect to appoint a keeper, they shall forfeit ten dollars for each month of such neglect. Pub. Sts., c. 27, § 35.

Memorial Day; Headstones and Monuments. — Towns may at legal meetings grant and vote

such sums as they judge necessary for erecting headstones or other monuments at the graves of persons who, accredited to their respective quotas, served in the military or naval service of the United States in the War of the Rebellion; erecting monuments in memory of their soldiers who died in the service of the country in said war; and for keeping in repair or decorating graves, monuments, or other memorials, erected to the memory of soldiers or sailors who have died in the military or naval service of the United States, Pub. Sts., c. 27, § 10, amended by St. 1886, c. 76; and for the purpose of erecting headstones or other monuments to the memory of persons who, accredited to their respective quotas, served in the military or naval service of the United States in the Revolutionary War, the War of 1812, the Seminole War, and the Mexican War, and for keeping in repair and decorating such monuments and the graves of such persons. St. 1884, c. 42.

Necessary Charges. — Towns may at legal meetings grant and vote such sums of money as they judge necessary for all necessary charges arising in such town. Pub. Sts., c. 27, § 10.


“Necessary charges” are not confined to the objects specifically enumerated in Pub. Sts., c. 27, § 10, but must include the necessary charges arising from the exercise of any power conferred, or duty imposed on towns by other provisions

of the statutes. *Minot v. West Roxbury*, 112 Mass. 1.

Noxious Animals. — Towns may grant and vote money for encouraging the destruction of noxious animals. Pub. Sts., c. 27, § 10.

Nuisances. — In a city or town which adopts sections 1, 2, 3, 4, and 5 of chapter 101 of the Public Statutes, or has adopted the corresponding provisions of earlier statutes, at a legal meeting of the city council or inhabitants of the town, if the mayor and aldermen or selectmen, after due notice in writing to the owner of a burnt, dilapidated, or dangerous building, and a hearing of the matter, adjudge the same to be a nuisance to the neighborhood, or dangerous, they may make and record an order prescribing such disposition, alteration, or regulation thereof as they deem necessary; and thereupon the city or town clerk shall deliver a copy of the order to a constable, who shall forthwith serve an attested copy thereof upon such owner, and make return of his doings thereon to said clerk. Pub. Sts., c. 101, § 1.

Any city or town may, by its board of aldermen, selectmen, board of health or other officer or officers having in charge the disposition of the garbage, refuse, and offal of such city or town, contract for a term of years for the disposition of such garbage, refuse, and offal, by cremation or otherwise. St. 1889, c. 377.



Park. — Any town within this Commonwealth which accepts the provisions of St. 1882, c. 154, may elect park commissioners, who shall have power to locate within the limits of their respective towns or cities, a public park or parks, and for that purpose, from time to time, to take in fee by purchase, gift, devise, or otherwise, any and all such lands as they may deem desirable therefor, or to take bonds for the conveyance thereof to their respective towns or cities; to lay out and improve any such park or parks; provided, however, that no land shall be taken, or any other thing involving an expenditure of money be done under this act until an appropriation sufficient to cover the estimated expense thereof shall, in a town, have been made by a vote of two-thirds of the legal voters present and voting in a legal town meeting called for the purpose, or, in a city, by a vote of two-thirds of each branch of the city council; and such expenditures shall in no case exceed the appropriations made therefor, and all contracts made for expenditures beyond the amount of such appropriations shall be void; provided, further, that, in a town, no taking of land otherwise than by purchase shall be valid unless such taking is reported to the town, filed, accepted, and allowed, as provided by section 71 of chapter 49 of the Public Statutes in the case of laying out town ways.

Any town or city in which a public park

is laid out under this act may raise, appropriate, and expend such sums of money as may be deemed best for the purchase and improvement of such park or parks, subject to the laws of this Commonwealth limiting municipal indebtedness. St. 1882, c. 154.


Paupers. — See Poor.

Poor. — Towns may grant and vote money for the relief, support, maintenance, and employment of the poor. Pub. Sts., c. 27, § 10.

Every city and town shall relieve and support all poor and indigent persons, lawfully settled therein, whenever they stand in need thereof. Pub. Sts., c. 84, § 1.

Any city or town which incurs expense for the support of a pauper having a settlement therein may recover the same against such person, his executors or administrators, in an action of contract for money paid, laid out, and expended for his use. St. 1882, c. 113.

A city or town may erect or provide a workhouse or almshouse for the employment and support of poor and indigent persons who are maintained by or receive alms from the city or town; of persons who, being able of body to work and not having estate or means otherwise to maintain themselves, refuse or neglect to work; of persons who live a dissolute, vagrant life, and exercise no ordinary calling or lawful business; of persons who spend their time and property in public houses to the neglect of their



proper business, or who, by otherwise misspending their earnings to the impoverishment of themselves and their families, are likely to become chargeable to the city or town; and of other persons sent thereto under any provisions of law. Pub. Sts., c. 33, § 1.

No city or town shall erect or maintain an almshouse or house of correction within the limits of any other place without the consent of such other place. Pub. Sts., c. 33, § 2.

Any number of cities or towns may at their joint charge and for their common use, erect or provide a workhouse or almshouse, and purchase land for the use thereof. Pub. Sts., c. 33, § 5.

Any town may establish within its limits, and be constantly provided with, one or more hospitals for the reception of persons having a disease dangerous to the public health. Pub. Sts., c. 80, § 70.

A city or town may erect, establish, and maintain a hospital for the reception of persons who, by misfortune or poverty, require relief during temporary sickness. City councils and selectmen may make such ordinances, rules, and regulations as they may deem expedient for the appointment of trustees and all other officers, agents, and servants necessary for managing such hospital. Pub. Sts., c. 84, § 20. See page 120.

Quarantine. — A town may establish a quarantine ground in a suitable place either within

or without its own limits; but if such place is without its limits, the assent of the town within whose limits it may be established shall be first obtained. Pub. Sts., c. 80, § 62.

Two or more towns may, at their joint expense, establish a quarantine ground for their common use in a suitable place either within or without their own limits; but if such place is without their limits, they shall first obtain the assent of the town within whose limits it may be. Pub. Sts., c. 80, § 63.

Railroads. — Any town within which the road of a railroad corporation organized after the 1st day of February in the year 1875, or the road of a railroad corporation then existing and whose road was not then constructed, is located or terminates, and any such city having by the census of the year 1870 less than thirty thousand inhabitants, may subscribe for and hold shares of the capital stock or the securities of any or all such corporations, to an amount not exceeding, for the aggregate in all such corporations, two per cent of the valuation of such city or town for the year in which the subscription is made; and any such town having a valuation not exceeding three millions of dollars may so subscribe for and hold the securities of such corporations or either of them, to an additional amount not exceeding one per cent of the valuation of such town in the year in which the subscription is

made; provided, that two-thirds of the legal voters in such city or town, present and voting by ballot and using the check-list, at legal meetings called for the purpose and held in like manner as the meetings for the choice of municipal officers are held therein, vote so to subscribe. Nothing in this section shall be construed to authorize a city or town to make subscriptions to a greater amount than is authorized by section 19 of chapter 29. Pub. Sts., c. 112, § 46.

A city or town, by vote passed in accordance with the provisions of the preceding section, may become an associate under section 34 in the formation of a railroad corporation, to construct a road located or terminating therein, with all the powers and privileges enjoyed by an individual associate. Pub. Sts., c. 112, § 47.

The form in which the matters provided for in the two preceding sections shall be voted upon, shall be determined in cities by a concurrent vote of both branches of the city council, and in towns by the selectmen; and whenever a city or town has voted to subscribe to such stock or securities, or to become an associate in the formation of such corporation, the mayor and aldermen or the selectmen shall select some person who may in behalf of the city or town execute its vote. Pub. Sts., c. 112, § 48.

A subscription authorized by vote under section 46 shall be void, unless actually made by the

persons authorized, within twelve months from said vote; and unless, within the said period, a part thereof is actually paid, or some proceeding is commenced by the corporation to enforce payment thereof, and at least twenty per cent of the capital stock of the corporation is actually paid in cash, and at least ten per cent of the capital stock is actually expended by it in the construction of its road. Pub. Sts., c. 112, § 49.

Towns and cities so subscribing for stock or securities may raise money to pay for the same by tax, or, within the limits prescribed by section 19 of chapter 29, by loan, and may issue their notes or bonds for such loan, and may hold and dispose of such stock and securities in like manner as other town property; and the selectmen of towns, and such persons as may be authorized by the city councils of cities, may represent their respective municipalities at all meetings of the corporations in which the stock or securities are held, and vote upon all the shares of stock owned by them respectively. Pub. Sts., c. 112, § 50.

Reading-room.— See Library and Reading-room.

Real and Personal Estate.— Towns may hold real estate for the public use of the inhabitants, and may convey the same, either by a vote of the inhabitants or by a deed of their committee or agent; may hold personal estate for the public use of the inhabitants, and alienate and dispose

of the same by vote or otherwise ; may hold real and personal estate in trust for the support of schools, and for the promotion of education within the limits of the town ; may receive, hold, and manage any devise, bequest, or donation for the establishment or maintenance of any reading-room for which it may grant money under Pub. Sts., c. 27, § 10 ; may make contracts necessary and convenient for the exercise of their corporate powers ; and may make orders for the disposal or use of their corporate property, as they may judge necessary or expedient for the interest of the inhabitants. Pub. Sts., c. 27, § 9.

Towns may lease, for a period not exceeding five years, any public building, except a school-house in actual use as such, to any post of the Grand Army of the Republic. St. 1885, c. 60.

Rewards.— The mayor and aldermen of a city or selectmen of a town, when in their opinion the public good requires it, may offer a suitable reward, to be paid by such city or town, not exceeding five hundred dollars in one case, to any person who in consequence of such offer secures a person charged with a capital crime or other high crime or misdemeanor committed in such place, or detects and secures a person who has committed such crime in such place ; and such reward shall be paid by the treasurer upon the warrant of the mayor and aldermen or selectmen. Pub. Sts., c. 212, § 12. See Felony.

The inhabitants of a town at a legal meeting may offer a reward larger than that which the selectmen are authorized to make. *Crawshaw v. Roxbury*, 7 Gray, 374.

Roads. — See Ways.

Telegraph. — A town may construct lines of electric telegraph for its own use upon and along the public ways within its limits, subject to the provisions of chapter 109 of the Public Statutes, so far as the same are applicable. Pub. Sts., c. 27, § 44.

All provisions of law granting to cities and towns authority to regulate telegraph and telephone lines shall, so far as applicable, apply to every corporation, copartnership, or person having authority to place posts, wires, structures, and other appliances for any purpose in or under public ways or places, and the selectmen of towns and the board of aldermen in cities may cause the removal at the expense of the owner or owners of any unused posts, wires, structures, or other appliances. St. 1889, c. 398.

Vaccination. — Towns shall furnish the means of vaccination to such of their inhabitants as are unable to pay for the same. Pub. Sts., c. 80, § 53. Each town may make provision for the vaccination of its inhabitants, under the direction of the board of health or a committee chosen for the purpose. Pub. Sts., c. 80, § 55.



CHAPTER X.

SCHOOLS.

TOWNS at legal meetings may grant money for the support of public schools authorized or required by law. Pub. Sts., c. 27, § 10.

The several towns shall at their annual meetings or at a regular meeting called for the purpose, raise such sums of money for the support of schools as they judge necessary ; which sums shall be assessed and collected in like manner as other town taxes. Pub. Sts., c. 44, § 17.

In every town there shall be kept, for at least six months in each year, at the expense of said town, by a teacher or teachers of competent ability and good morals, a sufficient number of schools for the instruction of all the children who may legally attend public school therein, in orthography, reading, writing, English grammar, geography, arithmetic, drawing, the history of the United States, and good behavior. Algebra, vocal music, agriculture, sewing, physiology, hygiene, and the elementary use of hand tools shall be taught, by lectures or otherwise,

in all the public schools in which the school committee deem it expedient. Pub. Sts., c. 44, § 1; St. 1884, c. 69.

Physiology and hygiene, which, in both divisions of the subject, shall include special instruction as to the effects of alcoholic drinks, stimulants, and narcotics, on the human system, shall be taught as a regular branch of study to all pupils in all schools supported wholly or in part by public money, except special schools maintained solely for instruction in particular branches, such as drawing, mechanics, art, and like studies. All acts or parts of acts relating to the qualifications of teachers in the public schools shall apply to the branch of study prescribed in this act. St. 1885, c. 332, § 1.

The power of towns to vote and grant money for the support of town schools is not restricted to the amount that is necessary to support the schools described in chapter 44 of the Public Statutes; but they have power to vote and grant money for the support of other town schools, for instruction in branches of knowledge which the Public Statutes do not require to be taught in such schools. *Cushing v. Newburyport*, 10 Met. 508.

Every town may, and every town containing five hundred families or householders, according to the latest public census taken by the authority either of the Commonwealth or of the United

States, shall, besides the schools prescribed in the preceding section, maintain a high school to be kept by a master of competent ability and good morals, who, in addition to the branches of learning before mentioned, shall give instruction in general history, book-keeping, surveying, geometry, natural philosophy, chemistry, botany, the civil polity of the Commonwealth and of the United States, and the Latin language. Such high school shall be kept for the benefit of all the inhabitants of the town, ten months at least, exclusive of vacations, in each year, and at such convenient place or alternately at such places in the town as the legal voters at their annual meeting determine. And in every town containing four thousand inhabitants, the teacher or teachers of the schools required by this section shall, in addition to the branches of instruction before required, be competent to give instruction in the Greek and French languages, astronomy, geology, rhetoric, logic, intellectual and moral science, and political economy. Pub. Sts., c. 44, § 2.

Twenty days or forty half days of actual session shall be counted as one month of school. Pub. Sts., c. 46, § 7.

Every town and city having ten thousand or more inhabitants shall establish and maintain, in addition to the schools required by law to be maintained therein, evening schools for the

instruction of persons over twelve years of age in orthography, reading, writing, geography, arithmetic, drawing, the history of the United States, and good behavior. Such other branches of learning may be taught in such schools as the school committee of the town shall deem expedient. St. 1883, c. 174, § 1.

Any town may, and every city and town having more than ten thousand inhabitants shall, annually make provision for giving free instruction in industrial or mechanical drawing to persons over fifteen years of age, in either day or evening schools, under the direction of the school committee. Pub. Sts., c. 44, § 7.

A town may establish and maintain one or more industrial schools, which shall be under the superintendence of the school committee, who shall employ the teachers, prescribe the arts, trades, and occupations to be taught therein, and have the general control and management thereof; but they shall not expend for any such school an amount exceeding the appropriation specifically made therefor, and shall not compel any scholar to study any trade, art, or occupation, without the consent of his parent or guardian; and attendance upon such school shall not take the place of the attendance upon public schools required by law. Pub. Sts., c. 44, § 8.

A town may establish and maintain, upon shore or upon ships or other vessels, at the

option of the school committee, one or more schools for training young men or boys in nautical duties; such schools shall be subject to the provisions of the preceding section, except that the school committee may excuse boys attending such nautical schools from attendance on other schools. Pub. Sts., c. 44, § 9.

A town may establish and maintain, in addition to the schools required by law to be maintained therein, schools for the education of persons over twelve years of age; may determine the term or terms of time in each year and the hours of the day or evening during which said school shall be kept; and may appropriate such sums of money as may be necessary for the support thereof. Pub. Sts., c. 44, § 12.

Two adjacent towns, having each less than five hundred families or householders, may form one high school district for establishing such a school as is contemplated in the preceding section [2], when a majority of the legal voters of each town, in meetings called for that purpose, so determine. Pub. Sts., c. 44, § 3.

Two or more towns may, by a vote of a majority of the legal voters in each town, unite in establishing union schools for the accommodation of such contiguous portions of each as shall be mutually agreed upon. Pub. Sts., c. 44, § 10.

A town which refuses or neglects to raise money for the support of schools as required by

this chapter shall forfeit a sum equal to twice the highest sum ever before voted for the support of schools therein. A town which refuses or neglects to choose a school committee to superintend its schools, shall forfeit not less than five hundred nor more than one thousand dollars, to be paid into the treasury of the county. Pub. Sts., c. 44, § 19.

SCHOOL-HOUSES.

Every town shall provide and maintain a sufficient number of school-houses, properly furnished and conveniently located for the accommodation of all the children therein entitled to attend the public schools; and the school committee, unless the town otherwise directs, shall keep such houses in good order, and shall procure a suitable place for the schools, where there is no school-house, and provide fuel and all other things necessary for the comfort of the scholars therein, at the expense of the town. A town which for one year refuses or neglects to comply with the requirements of this section shall forfeit not less than five hundred nor more than one thousand dollars, to be paid, apportioned, and appropriated as provided in sections 19 and 20. Pub. Sts., c. 44, § 46.

A town, at a meeting legally called for the purpose, may determine the location of its school-houses, and adopt all necessary measures to pur-

chase and procure land for the accommodation thereof. Pub. Sts., c. 44, § 47.

When land has been designated by a town as a suitable place for the erection of a school-house and necessary buildings, or for enlarging a school-house or school-house lot, the selectmen may proceed to select at their discretion, and to lay out a school-house lot or an enlargement thereof, and to appraise the damages to the owner of such land in the manner provided for laying out town-ways and appraising damages sustained thereby; and upon the approval and adoption by the town of such selection and laying out of such lot, or of any enlargement thereof, the land shall be taken, held, and used for such purpose. But no lot so taken or enlarged shall exceed in the whole eighty square rods, exclusive of the lands occupied by the school buildings. Pub. Sts., c. 44, § 48.

A town is not authorized to delegate to its selectmen the duty of designating the land to be taken for a school-house lot; such designation must be by vote of the town. A town which illegally takes a lot of land for a school-house lot, and erects a school-house thereon, is not entitled to an allowance for improvements under Pub. Sts., c. 173, § 18. *Spaulding v. Chelmsford*, 117 Mass. 393.

The school committee of a town in which the school district system does not exist shall

have the general charge and superintendence of the school-houses therein, so far as relates to the uses to which the same may be appropriated. Pub. Sts., c. 44, § 50.

The school committee are by statute required to have the care of the high school building, and to keep the same in good order at the expense of the town, and, unless the town otherwise directs, they are also required by statute to keep other school-houses in good order. Pub. Sts., c. 44, §§ 41, 46; *McKenna v. Kimball*, 145 Mass. 555.

SUPERINTENDENT OF PUBLIC SCHOOLS.

A city by ordinance, and a town by vote, may require the school committee annually to appoint a superintendent, who, under the direction and control of said committee, shall have the care and supervision of the public schools; or the school committee of any city without such ordinance may appoint a superintendent by a majority vote of the whole board; the compensation of the superintendent shall not be less than one dollar and fifty cents for each day of actual service, and shall be determined by the school committee, and, in cities without such ordinance, by a majority vote of the whole board; in every city in which such ordinance is in force or in which a superintendent is appointed, and in every town in which a super-

tendent is appointed and which does not provide otherwise by vote, the school committee shall receive no compensation. Pub. Sts., c. 44, § 43.

Two or more towns may, by a vote of each, form a district for the purpose of employing a superintendent of public schools therein, who shall perform in each town the duties prescribed by law. Pub. Sts., c. 44, § 44.

Such superintendent shall be annually appointed by a joint committee, composed of the chairman and secretary of the school committee of each of the towns in said district, who shall determine the relative amount of service to be performed by him in each town, and shall fix his salary and apportion the amount thereof to be paid by the several towns, and certify such amount to the treasurer of each town. Said joint committee shall, for said purposes, be held to be the agents of each town composing such district. Pub. Sts., c. 44, § 45.

Any two or more towns, the valuation of each of which does not exceed \$2,500,000, and the aggregate number of schools in all of which is not more than fifty nor less than thirty, may, by vote of the several towns, unite for the purpose of the employment of a superintendent of schools under the provisions of this act. St. 1888, c. 431, § 1.

When such a union has been effected, the school committee of the towns comprising the

union shall form a joint committee, and for the purposes of this act said joint committee shall be held to be the agents of each town comprising the union. Said committee shall meet annually in joint convention in the month of April, at a day and place agreed upon by the chairmen of the committees of the several towns comprising the union, and shall organize by the choice of a chairman and secretary. They shall choose, by ballot, a superintendent of schools; determine the relative amount of service to be performed by him in each town; fix his salary, and apportion the amount thereof to be paid by the several towns, and certify such amount to the treasurer of each town. St. 1888, c. 431, § 2.

Whenever the chairman and secretary of such joint committee shall certify to the State auditor, under oath, that a union has been effected as herein provided; that the towns, in addition to an amount equal to the average of the total sum paid by the several towns for schools during the three years next preceding, unitedly have raised by taxation and appropriated a sum not less than seven hundred and fifty dollars for the support of a superintendent of schools; and that under the provisions of this act a superintendent of schools has been employed for one year, a warrant shall be drawn upon the treasurer of the Commonwealth for the payment of one

thousand dollars, one half of which amount shall be paid for the salary of such superintendent, and the remaining one half shall be appropriated and distributed on the basis of the average public school attendance of the towns forming such district for the year next preceding, which amount shall be paid for the salaries of teachers employed in the public schools within such district. St. 1888, c. 431, § 3.

The provisions of section 43 of chapter 44 of the Public Statutes respecting the service of school committees without pay, in towns wherein a superintendent is appointed, shall not apply to towns uniting in the employment of a superintendent under the provisions of this act. St. 1888, c. 431, § 5.

TEXT-BOOKS AND SCHOOL SUPPLIES.

The school committee of every city and town shall purchase, at the expense of such city or town, text-books and other school supplies used in the public schools; and said text-books and supplies shall be loaned to the pupils of said public schools free of charge, subject to such rules and regulations as to care and custody as the school committee may prescribe. St. 1884, c. 103, § 1. And in any city or town where hand tools shall be introduced into the schools, they shall be purchased by the school committee,

at the expense of such city or town, and loaned to such pupils as may be allowed to use them, free of charge; subject to such rules and regulations as to care and custody as the school committee may prescribe. St. 1884, c. 69.


APPARATUS AND BOOKS OF REFERENCE.

School committees may procure, at the expense of the city or town, in accordance with appropriations therefor previously made, such apparatus, books of reference, and other means of illustration as they deem necessary for the schools under their supervision. St. 1885, c. 161, § 2.

The income of the Massachusetts school fund received by the several cities and towns shall be applied by the school committees thereof to the support of the public schools therein; but said committees may, if they see fit, appropriate therefrom any sum, not exceeding twenty-five per cent of the same, to the purchase of books of reference, maps, and apparatus for the use of said schools. Pub. Sts., c. 43, § 6.

CONVEYANCE OF PUPILS.

Towns may, at legal meetings, grant and vote such sums as they judge necessary for conveying pupils to and from the public schools, the same to be expended by the school committee in their discretion. Pub. Sts., c. 27, § 10.



PUBLIC SCHOOLS.

All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance, exclusively, of its own school. Article XVIII., Amendments to Constitution.


The phrases "public schools" and "common schools" have acquired under the legislation and practice of this State a well-settled signification. They are never applied to the higher seminaries of learning such as incorporated academies and colleges. *Merrick v. Amherst*, 12 Allen, 500; *Jenkins v. Andover*, 103 Mass. 94.

The obligations imposed on towns by the statute are to provide schools of certain grades for certain prescribed lengths of time; and beyond these periods the law imposes no obligation. The law prescribes no amount of money which shall be raised, and fixes no limit to the amount which it may be necessary to raise. Towns are obliged to maintain schools for certain periods during the year, and the committee have the

power to select and contract with the teachers. For the time during which the towns are obliged by law to keep the schools, they must pay such salaries as may be contracted for by the committee. The salaries can be fixed by law in no other way than by the committee. Taking this power away from the committee would break up the whole system established by law in regard to the public schools.

Whether there shall be any schools kept beyond the time required by the statute, is a matter depending wholly on the will and pleasure of the inhabitants of the towns. If the schools are continued, there is no one authorized by law to select and contract with the teachers but the committee. If the salaries contracted for by the committee are thought to be onerous, the town can stop the schools after the expiration of the time required by law. The only way left open by the statute for the town to reduce the expenses is not to continue the schools beyond the time required by the statute. There is no provision for the town to reduce the salaries, or to interfere with the contract made by the committee with the teachers.

But it is in the power of towns to resolve not to continue their schools beyond the limited period during which the law expressly requires that they should be continued. Beyond these required periods, the towns have the power of



controlling and limiting the times of keeping their schools, and in this way of controlling and limiting the amount of money to be raised for schools; though the towns have the right of raising as much money for this object as they may think proper, beyond what is positively required by law. The law fixes the smallest amount of instruction to be provided by towns, leaving with towns the right to provide such further amount as they may think proper. *Batchelder v. Salem*, 4 Cush. 599 (1849); *Charlestown v. Gardner, et al.*, 98 Mass. 587 (1868).

It is provided by St. 1886, c. 313, that the school committee of any city or town may elect any duly qualified person to serve as a teacher in the public schools of such city or town during the pleasure of such committee; provided, such person has served as a teacher in the public schools of such city or town for a period of not less than one year.

In every public school having an average of fifty scholars, the town to which such school belongs shall employ one or more female assistants, unless such town votes to dispense with such assistant. Pub. Sts., c. 44, § 14.

Towns may hold real and personal estate in trust for the support of schools, and for the promotion of education within the limits of the town. Pub. Sts., c. 27, § 9.

CHAPTER XI.

SEWERS AND DRAINS. — HIGHWAYS, &C.

Sewers. — THE mayor and aldermen of a city, and the selectmen or road commissioners of a town, may lay, make, and maintain all such main drains or common sewers as they adjudge to be necessary for the public convenience or the public health, through the lands of any persons or corporations, and may repair the same whenever it is necessary; main drains and common sewers so laid shall be the property of the city or town. Cities and towns may, with the approval of the State board of health, obtained after a public hearing by said board of all parties interested, purchase or take land within their respective limits for the purification and disposal of sewage. Said board shall give notice of such hearing by publication in such newspapers and at such times as it may deem proper. Pub. Sts., c. 50, § 1, amended by St. 1890, c. 124.

When land is taken by virtue of the preceding section, the proceedings in a city shall be the

same as in the laying out of highways or streets therein ; and in towns, the same as in the laying out of town-ways. Pub. Sts., c. 50, § 2.

Damages occasioned by the laying, making, or maintaining of main drains or common sewers shall be ascertained and recovered in a city, as in the laying out of highways or streets therein ; and in towns, as in laying out of town-ways. Pub. Sts., c. 50, § 3.

Every person who enters his particular drain into such main drain or common sewer, or who, by more remote means, receives benefit thereby for draining his cellar or land, shall pay to the city or town a proportional part of the charge of making and repairing the same, and of the charge, not already assessed, of making and repairing other main drains and common sewers through which the same discharges, to be ascertained, assessed, and certified, by the mayor and aldermen or selectmen ; and notice thereof shall be given to the party to be charged, or to his tenant or lessee. Pub. Sts., c. 50, § 4.

The city council of a city or the legal voters of a town may adopt a system of sewerage for a part or the whole of its territory, and may provide that assessments made under section 4 shall be made upon owners of estates within such territory by a fixed uniform rate, based upon the estimated average cost of all the sewers therein, according to the frontage of such estates on any

street or way where a sewer is constructed, or according to the area of such estate within a fixed depth from such street or way, or according to both such frontage and area; but no assessment in respect to any such estate which, by reason of its grade or level, or for any other cause, cannot be drained into such sewer, shall be made, certified, or notified, until such incapacity is removed. Pub. Sts., c. 50, § 7.

The mayor and aldermen of any city except Boston, or a town in which main drains or common sewers are laid under the provisions of sections 1, 2, and 3, may, by vote, determine that, instead of paying an assessment under section 4, every person who uses such main drains or common sewers in any manner shall pay for the permanent privilege to his estate such reasonable sum as the mayor and aldermen or the selectmen or road commissioners shall determine. Pub. Sts., c. 50, § 8.

Nothing herein contained shall prevent a city or town from providing, by ordinance or otherwise, that a part of the expense of constructing, maintaining, and repairing main drains or common sewers shall be paid by such city or town. And in the city of Boston, not less than one-quarter part of such expense shall be paid by the city, and shall not be charged upon those using the main drains or common sewers. Pub. Sts., c. 50, § 11.

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No general statute has been passed authorizing towns in their corporate capacity to lay out or construct drains or sewers. In acting under Pub. Sts., c. 50, § 1, selectmen do not act as agents of the town, but as public officers, drawing their power from the sovereign authority. *Lemon v. Newton*, 134 Mass. 476.

A town may make common sewers and drains under a highway, whether it owns the soil or not. *Boston v. Richardson*, 13 Allen, 146. See House Drainage.


The superintendent of streets, in towns where no other provision is made, shall have full charge of all repairs required of towns upon sewers and drains. St. 1889, c. 98, § 3. A town is liable for the negligence of its servants in constructing or repairing a sewer. *Stock v. Boston*, 149 Mass. 410.

Shade-Trees. — A city or town may grant and vote a sum not exceeding fifty cents for each of its ratable polls in the preceding year to be expended in planting, or in encouraging the planting by the owners of adjoining real estate, of shade-trees upon the public squares or highways, and may plant such trees subject to the provisions of section 6 of chapter 54. Pub. Sts., c. 27, § 12, amended by St. 1885, c. 123, § 1.

The mayor and aldermen, selectmen, road commissioners, or any municipal officer of a city or town to whom the care of the streets or roads

may be intrusted, may authorize the planting of shade-trees therein, wherever it will not interfere with the public travel or with private rights; and shade-trees standing, and trees planted, pursuant to such license, shall be deemed and taken to be the private property of the person so planting them, or upon whose premises they stand or are planted, and shall not be deemed a nuisance; but upon complaint made to the mayor and aldermen, selectmen, or road commissioners, they may cause such trees to be removed at the expense of the owner thereof, if the public necessity seems to them so to require. Pub. Sts., c. 54, § 6.

The officer appointed to have the care of the trees belonging to a city or town, and his assistants, but no other person, except as is provided in c. 52, § 11, and c. 54, § 10, of Public Statutes, may, and when required by the surveyors of highways or road commissioners shall, trim or lop off trees and bushes standing in highways, town-ways, streets, or lanes, and, when ordered by a vote of the mayor and aldermen, selectmen or road commissioners, passed after public notice and hearing, shall cut down and remove such trees; and the surveyor of highways, and road commissioners shall forthwith cause to be dug up and removed whatever obstructs such ways, or endangers, hinders, or incommodes persons travelling thereon; and shall



forthwith cause snow to be removed from such ways or to be so trodden down as to make the ways reasonably safe and convenient. Pub. Sts., c. 52, § 10, amended by St. 1885, c. 123, § 2.

No person shall cut down or remove an ornamental or shade tree standing in a highway, town-way, or street, without first giving notice of his intention to one of the selectmen or road commissioners, or to the mayor; and if the selectmen or road commissioners, or mayor and aldermen desire to retain the tree, they shall give notice of such desire to such person within ten days thereafter; and the damage caused by retaining said tree shall be determined in the same manner as in the case of damage by an alteration in such highway, town-way, or street. Pub. Sts., c. 54, § 10.

The superintendent of streets shall, under the direction of the selectmen, have the care and the preservation of shade-trees. St. 1889, c. 98, § 2.

A highway surveyor, before he cuts down a shade-tree standing in the highway, must procure authority from proper officers. *Chase v. Lowell*, 149 Mass. 85.

Taxes, Discount and Interest on. — Towns at their annual meetings, and city councils of cities, may allow a discount of such sums as they think expedient to persons making voluntary payment of their taxes within such periods of time as

they prescribe. In such case the collectors shall make such discount accordingly. Pub. Sts., c. 11, § 65.

When a city or town has fixed a time within which taxes assessed therein shall be paid, such city by its city council, and such town, at the meeting when money is appropriated or raised, may vote that, on all taxes remaining unpaid after a certain time, interest shall be paid at a specified rate, not exceeding seven per cent per annum; and may also vote that, on all taxes remaining unpaid after another certain time, interest shall be paid at another specified rate, not exceeding seven per cent per annum; and the interest accruing under such vote or votes shall be added to, and be a part of, such taxes. Pub. Sts., c. 11, § 67.

A collector of taxes, who has paid over, in accordance with his bond, the full amount of the taxes committed to him, whether actually collected or not, at the dates specified in his bond, but has withheld the interest added to all taxes unpaid after a certain time by a vote of the town under Pub. Sts., c. 11, § 67, and collected by him from the delinquent taxpayers, is entitled to such interest. *Needham v. Morton*, 146 Mass. 476.

Telegraph. — A town may construct lines of electric telegraph for its own use upon and along the public ways within its limits, subject to the

provisions of chapter 109 of the Public Statutes as far as the same are applicable. Pub. Sts., c. 27, § 44.

All provisions of law granting to persons and corporations authority to erect, lay, and maintain, and to cities and towns authority to regulate telegraph and telephone lines, except sections 16 and 18 of chapter 109 of the Public Statutes, shall, so far as applicable, apply to lines for the transmission of electricity for the purpose of lighting. St. 1883, c. 221.

Town-Hall. — A town, at a meeting held for the purpose, may take any land not appropriated to public uses within its limits as a place for the erection of a town-hall, or for the enlargement of its town-hall lot; but no lot so taken or enlarged shall exceed in extent one acre. The town shall, within sixty days after such taking, file in the registry of deeds for the county or district in which the land is situated, such a description of the land so taken as is required in a common conveyance, and a statement of the purpose for which such land was taken, which description and statement shall be signed by the selectmen, or by a major part of them; and the title of such land shall vest in such town from the time of such filing. Pub. Sts., c. 27, § 41.

All damages sustained by such taking shall be paid by the town; and if the selectmen fail

to agree upon such damages with the owner, the same may be assessed and determined by a jury in the manner provided by law in the case of the laying out of town-ways, upon application therefor made within three years after such filing. If the damages so awarded exceed the amount tendered to the owner as compensation before the filing of his application for a jury, he shall recover his costs; otherwise the town shall recover costs. Pub. Sts., c. 27, § 42.

Land so taken shall revert to the owner or to his heirs or assigns, unless within three years after the filing of such description and statement a town-hall is erected thereon, or the same is enclosed and devoted to the enlargement of a town-hall lot. Pub. Sts., c. 27, § 43.

A town may erect a town house of sufficient capacity for all the business which it may have occasion to do in such a building, and may, in its erection, make suitable provision for its prospective wants; and if the building contains rooms not wanted for the time being for municipal business, the town may let them temporarily, or allow them to be used gratuitously. *French v. Quincy*, 3 Allen, 9.

Trust Funds. — See Burial-Ground; Schools, and Library and Reading-room.

Wash-houses. — See Baths.

Water Supply. — A town, with the consent

of a majority of its selectmen, ratified by a majority of its voters, present and voting thereon at a legal meeting, at which the check-list shall be used, may, for the purpose of supplying water to its inhabitants, purchase of any municipal or other corporation the right to take water from any of its sources of supply or from pipes leading therefrom; or may purchase its whole water rights, estates, franchises, and privileges, and thereby become entitled to all the rights and privileges and subject to all the duties and liabilities of said corporation; or may make a contract therewith for a supply of water. Pub. Sts., c. 27, § 27.

A town making such purchase may issue, in payment therefor, bonds, bearing interest at a rate not exceeding seven per cent, payable semi-annually, and redeemable at a time not exceeding twenty years¹ from their date; and may, for the purpose of purchasing materials, laying pipes, and doing other work necessary for so supplying water, issue additional similar bonds; and a town

¹ There is a seeming disagreement between the 28th section of chapter 27 and the 8th section of chapter 29 of the Public Statutes, as to the time within which bonds issued by a town on account of water supply, are to be made payable. The former section is taken from St. 1870, c. 93, while the latter is from St. 1875, c. 209; and, so far as one is inconsistent with the other, the subsequent statute may be regarded as a repeal of, or as an amendment to the former. *Commonwealth v. Davis*, 11 Gray, 48, 51.

making such contract as aforesaid may, for the purpose named in this section, issue similar bonds. Pub. Sts., c. 27, § 28.

The whole amount of bonds issued by any town under the preceding section shall not exceed ten per cent of its valuation. Pub. Sts., c. 27, § 29.

If the water is brought through another city or town, pipes may be laid through any streets and highways therein designated by the mayor and aldermen or selectmen thereof; and the town laying such pipes shall be liable, in an action of contract or tort, for all damages occasioned thereby. Pub. Sts., c. 27, § 30.

All purchase-money received under the provisions of the four preceding sections by a town owing a water debt shall be applied to the payment of such debt. Pub. Sts., c. 27, § 31.

A town, in which water is supplied at the public expense, may, by by-laws, prescribe rules and regulations for the inspection, materials, construction, alteration, or use of all pipes and of all fixtures through which such water is used within said town, and may impose penalties not exceeding twenty dollars for each violation thereof; and may prohibit the use of such water by persons neglecting or refusing to comply with the provisions of such by-laws; and any such by-law may be made operative within the whole territory of such town, or within any prescribed

or defined district or districts of said territory. Pub. Sts., c. 27, § 16.

The powers conferred by the preceding section, except the power to impose penalties, may be exercised through any board or commission which the town may designate ; but the powers so delegated may at any time be revoked by the authority delegating them. Pub. Sts., c. 27, § 17.

A town may regulate by by-laws, not repugnant to law, with penalties not exceeding fifty dollars for each violation thereof, the use of reservoirs and land and drive-ways appurtenant thereto, forming a part of its system of water-supply within its limits. Pub. Sts., c. 27, § 8.

A town may contract with a water company to supply water to hydrants for fire purposes for an annual compensation for ten years. *Smith v. Dedham*, 144 Mass. 177.

Any city or town having a water supply may contract with any other city or town situated in the water-shed of such supply to contribute, on such terms as may be deemed proper, to the cost of building a sewer or system of sewers which will aid in protecting any part of the source of such water supply from pollution. St. 1888, c. 160.

Ways. — Under our system of establishing ways, some are laid out by the county commissioners, and some by the selectmen or road commissioners. If the proceedings for laying

out the way originate before the county commissioners, the way is, technically, a highway; if they originate before the selectmen or road commissioners, it is a town-way or a private way. *Blackstone v. County Commissioners*, 108 Mass. 68. The damages caused by laying out a highway are paid from the county treasury; by laying out a town-way, by the town; and by laying out a private way, by the person for whose use it is laid out, unless the selectmen or road commissioners (or in case of an appeal, the county commissioners) deem it reasonable that part of the damage shall be paid by the town. All ways are public ways, and are constructed at the expense of the town, except that in case of a highway the county commissioners, after the road is completed, may order the whole or a part of the expense to be paid out of the county treasury. Pub. Sts., c. 49, §§ 58, 62. *Denham v. County Commissioners*, 108 Mass. 202. A town, when ordered to construct a highway laid out by the county commissioners, is not authorized to construct it in a more expensive manner than is prescribed in the order of the county commissioners. *Keyes v. Westford*, 17 Pick. 273. Highways may be discontinued, altered, or specific repairs thereon may be ordered by the county commissioners; the authority of town officers to order specific repairs does not extend to highways. *Nealley v. Bradford*, 145 Mass. 561.

Town-Ways and Private Ways. — The selectmen or road commissioners of the several towns may lay out or alter town-ways for the use of their respective towns, and private ways for the use of one or more of the inhabitants thereof; or may order specific repairs to be made upon such ways. Pub. Sts., c. 49, § 65.

A town, at a meeting regularly called for the purpose, may discontinue any town-way or private way. Pub. Sts., c. 49, § 66.

Except as is hereinafter provided, no town-way or private way laid out or altered by the selectmen or road commissioners shall be established until such laying out or alteration, with the boundaries and measurements of the way, is reported to the town, and accepted and allowed at some public meeting of the inhabitants regularly warned and notified therefor; nor unless such laying out or alteration, with the boundaries and measurements, is filed in the office of the town-clerk, seven days at least before such meeting. Pub. Sts., c. 49, § 71.

The vote of a town, instructing its selectmen to lay out a particular town-way, is unauthorized and improper, it being the intention of the statute that the selectmen shall exercise their discretion in the matter. *Kean v. Stetson*, 5 Pick. 492.

The above provision of statute is not a mere formality, but intended to lay down an indispen-

sable condition, upon compliance with which the right of appropriating private property to public uses of this description can alone be lawfully exercised. *Blaisdell v. Winthrop*, 118 Mass. 138.

When the location or alteration of a private way is desired in a town for the use of one or more persons not being inhabitants thereof, or when the location or alteration of a private way, lying partly in one town and partly in another, is desired, the county commissioners may cause such way to be located or altered, proceeding therein as is provided where the selectmen or road commissioners refuse to lay out a private way. Pub. Sts., c. 49, § 72.

If the selectmen or road commissioners unreasonably refuse or neglect to lay out or alter a town-way or private way, when requested in writing by one or more of the inhabitants of a town, the county commissioners, on the petition in writing of a person aggrieved, presented at a regular meeting within one year, may cause such way to be laid out or altered, and may ascertain the place and course of the way, and estimate the damages sustained by any person by reason thereof. Such damages, with all costs of the proceedings, shall be paid by the town, if it is a town-way. If it is a private way, the damages and costs, or such part thereof as the county commissioners judge reasonable,



shall be paid by the persons for whose use it is laid out or altered, and the residue, if any, by the town. Pub. Sts., c. 49, § 73.

If a town unreasonably refuses or delays to approve and allow a town-way or private way laid out or altered by the selectmen or road commissioners, and to put the same on record, any person aggrieved thereby may, within one year thereafter, apply by petition in writing to the county commissioners; and the county commissioners, unless sufficient cause is shown against such application, may approve and allow of the way as laid out or altered by the selectmen or road commissioners, and may direct the laying out or alteration and acceptance to be recorded by the clerk of such town, which shall have the like effect as if accepted by the town and recorded. Pub. Sts., c. 49, § 74.

If a town in which a town-way or private way is laid out, altered, or approved, in pursuance of the three preceding sections, does not make and complete the same in the manner prescribed by the county commissioners, and to their acceptance, within six months from the time when the same is laid out or approved, or within the time directed by them, they shall, as soon as may be thereafter, cause such way to be completed, and at the next meeting shall direct the expenses and charges of completing the same to be paid out of the county treasury, and shall order no-

tice thereof to be given to the delinquent town, stating the amount of such expenses and charges. If the town does not, before the next regular meeting of the county commissioners, pay the same, with interest thereon at the rate of ten per cent from the time when the same was paid by the county treasurer, they shall cause the same with all further costs to be collected in the manner prescribed in section 61. Pub. Sts., c. 49, § 75.

Upon the application in writing of a person aggrieved by the refusal of a town to discontinue a town-way or private way, the county commissioners may order such way to be discontinued. Pub. Sts., c. 49, § 76.

When a town-way has been laid out or altered by the county commissioners, it shall not within two years thereafter be discontinued or altered by the town; and when such way has been discontinued by the county commissioners, the town shall not within two years thereafter lay out the same again. Pub. Sts., c. 49, § 77.

Highways. — When a highway is laid out or altered, the commissioners shall in their return determine and specify the manner in which such new highway or alteration shall be made, and also the time within which it shall be completed; and shall transmit to the clerks of the several towns in which said highway lies, a description of the location and bounds thereof within the

limits of such towns respectively, which description shall be recorded within ten days by the clerk in a book of records kept in the town for that purpose. They shall also allow the owner of the land a reasonable time, which shall be expressed in their return, to take off his timber, wood, or trees. If he fails to remove the same within the time allowed, he shall be deemed to have relinquished his right thereto for the benefit of the town. Pub. Sts., c. 49, § 9.

Without the vote of the town, neither the selectmen nor the road commissioners have power to contract for the construction of a highway which the county commissioners have ordered built. *Bean v. Hyde Park*, 143 Mass. 245.

After a highway has been established by the commissioners, if a town whose duty it is to make such highway, or a part thereof, does not make and complete the same within the time and in the manner prescribed, and to the acceptance of the commissioners, they shall, as soon as may be thereafter, cause such highway to be completed as aforesaid; and at their next meeting they shall direct the expenses and charges of completing the same to be paid out of the county treasury, and shall order notice thereof to be given to each town that is delinquent, stating the proportions which they are respectively required to pay. Pub. Sts., c. 49, § 60.

If a delinquent town does not pay its proportion of such expenses and charges before the next regular meeting of the commissioners, with interest thereon at the rate of ten per cent a year from the time the same is paid from the county treasury, the commissioners, unless sufficient cause is shown to the contrary, shall issue a warrant against such town for the sum it was ordered to pay, with the interest and the further costs of such notice and warrant; and the same shall be collected as in other like cases, and be paid into the county treasury. Pub. Sts., c. 49, § 61.

When a highway is laid out or altered, the commissioners, after the same is completed, may order the whole or a part of the expense incurred by any town in making or altering the same, to be paid out of the county treasury. Pub. Sts., c. 49, § 62.

Highways, town-ways, streets, causeways, and bridges shall be kept in repair at the expense of the town, city, or place in which they are situated, when other provision is not made therefor, so that the same may be reasonably safe and convenient for travellers, with their horses, teams, and carriages, at all seasons of the year. Pub. Sts., c. 52, § 1.

The mayor and aldermen of cities, and the selectmen or road commissioners of towns, may select and lay out land within their respective

limits, not appropriated to public uses or owned by any other city or town, as gravel and clay pits, from which may be taken earth and gravel necessary for the construction, repair, or improvement of streets or ways; and may lay out such ways as they deem necessary for convenient access thereto. All proceedings in relation to such land and ways shall be the same as are provided in the laying out of streets and town-ways respectively; and the report of such laying out shall specify the extent and depth of excavation to be permitted, and the time, not exceeding ten years, during which such land or way shall be held and used. Pub. Sts., c. 49, § 99.

Towns may authorize their surveyors or road commissioners or any other person to enter into contracts for making or repairing the highways or town-ways within the same. Pub. Sts., c. 52, § 13; *Hawks v. Charlemont*, 107 Mass. 414; *Clark v. Russell*, 116 Mass. 455.

The selectmen or road commissioners may enter upon, use, or take any land for the purpose of securing or protecting a public way or bridge, whenever in their opinion it is necessary so to do; and all damages sustained thereby shall be recovered in the manner provided for the assessment of damages occasioned by the laying out, alteration, or discontinuance of town-ways. Pub. Sts., c. 52, § 14.



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